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Towards a recomposition of foreign law within the system of private international law of the European Union

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Abstract: The present paper aims to examine and investigate the different areas of the subject matter in question, that are in conflict with laws in the area of private international law of the Union. The reconstruction towards a foreign law outlines a process of communitarization for the private international law of the Union. It is a functional system, that aims to create an area of freedom, justice, security with an autonomous and at the same time distinct way towards a respect of the relative national legal systems. The nature of this system is incomplete from both a subjective and objective point of view with the principles that outlines. It finds explanation in the uniform rules, that define the status of foreign law. Within this regulatory circle Art. 81 TFEU finds a basis for confirmation and follows the evaluation and the consequences that “embrace” the national legal systems, which produce values of uniformity, legal certainty as well as provide

for extended solutions towards a recognition of single individuals. These are, in other words, instruments of uniform law that allow access to justice, fair trial, etc. The reconstruction of the issues, that make up foreign law, through the principles of the law of the Union, such as primacy, loyal cooperation and non-discrimination, find space in the protection of fundamental rights, which link the integration process with rules to private international law of the Union that follow the path of harmonization and European integration.

Keywords: international private law of the Union; foreign law; useful effect; primacy of the law of the Union; conflict of law; civil and commercial jurisdiction; legal certainty; forum shopping; due process; uniform conflicts; ascertainment of foreign law; international cooperation; application of foreign law; non-discrimination; loyal cooperation; principle of effectiveness; primacy of the law of the Union.

Introduction

Reconstructing foreign law in the context of European private international law deserves further investigation since the application of foreign law regulates conflicts of laws and its maintenance in the national legislation of different states of the Union.

The issues in the field of private international law of the Union highlight the law of the Union and the matter of conflicts of laws and jurisdictions (Drobnig, 1966-1967; Rigaux, 1981; Fletcher, 1982; Roth, 1991; Struycken, 1992; Radicati di Brozolo, 1993; Fallon, 1995; Wilderspin, Lewis, 2002; Borràs, 2005; Kuipers, 2012).

The uniform character and the rules of private international law of the Union are part of binding regulations that affect the procedural treatment of foreign law (Remien, 2001; Jänterä-Jareborg, 2003; Bariati, Pataut, 2011).¹

Foreign law composes and configures its problems to legislators. The opportunity of such an investigation highlights the definition of the regulations on conflict of laws and jurisdictions, as a set of sectoral rules to a system, which leads to solution and enhances the characteristics of autonomy and coherence. Characteristics that respect the achievement of objectives inspired by the legislator for the procedural treatment

¹Remien affirms that: “(...) regulation of conflict of laws under Articles 61 and 65 EC cannot ignore the question of the status of foreign law in the court proceedings and of the ascertainment of its content (...)”. Jänterä-Jareborg sustains that: “(...) rules to be adopted in respect of recognition and enforcement of other Member States’ judgments as well as on jurisdiction and choice of law are aimed to promote European integration (...) an important explanation for the application of foreign law will be that it will promote European integration. The expected transformation from national rules to community rules will (...) request a new approach to why foreign law is to be applied but also require a total review of the procedural treatment of foreign law in the Member States of the European Union (...)”. Bariati, Pataut affirmed that: “(...) les règles nationales relatives à l’office du juge ne ressortiront pas indemnes de l’eupéanisation du droit internationale privé. Le passage d’une source à l’autre n’a pas pour conséquence uniquement de modifier l’origine de la règle. Il en modifie aussi en profondeur le régime juridique (...)”.

and application of foreign law.

The reference to conflict rules and the relevant consequences have an important basis for the choice of the European legislator on issues, which concern national legislation. He prejudices political objectives for the proper functioning of the private international law of the Union.

The values, that unify the normative production of the Union, within judicial cooperation in civil matters, justify a reconstruction, that is confirmed by Art. 81 TFEU, which codifies issues in the general part (Czepelak, 2010; Leible, Müller, 2012-2013; Leible, Unberath, 2013; Rühl, Von Hein, 2015; Leible, 2016; Kellerbauer, Klamert, Tomkin, 2024) of the procedural treatment and application of foreign law. This perspective highlights principles, that influence the corollaries of the law of the Union (Ziegler, Neuvonen, Moreno-Lax, 2022).

The constitutional nature of the different sectors in the legal system of the Union include the private international law of the Union, which considers the principles as parameters to fill the existing normative gaps. The status of foreign law is defined through the private international law of the Union.

What is the system of private international law of the Union?

The normative production allows an intense process of private international law, within a possible qualification of the system. We cannot speak of a system of private international law of the Union if we do not consider the definition of foreign law, which calls conflicting norms, which lose their meaning beyond their relevance.

The grouping of norms, which regulate the sectors of the system, are defined and developed in a coherent manner (Basedow, 2016; Wilke, 2020).² Antinomies are thus admitted between the norms that make up greater clarity and accessibility (De Miguel Asensio, 2019).³ A coherence refers to a relationship with the guiding principles which responds to a legislative policy part of the same system.

The need for coherence to a system, which represents the prerequisite for the adoption of the legislator and the elimination of responsive and demanding rules (Fiorini, 2008), is linked to the private international law of the Union, which regulates rules that govern the procedural treatment and the application of

²Basedow affirms that: “(...) Kohärenz, als Eigenschaft eines Rechtssystems, stellt ein Ziel dar sowohl für die Rechtspolitik wie auch für die Rechtsanwendung (...)”.

³De Miguel Asensio states that: “(...) fragmentation resulting from the rapid adoption of a significant number of separate regulations on conflict of laws with a high technical content influences the particular complexity of the current landscape in this area (...)”.

foreign law.

Integration process in the field of private international law of the Union

The matter of conflict of laws and the related jurisdictions for typical acts are provided for by Art. 288 TFEU (Kellerbauer, Klamert, Tomkin, 2024). It is a regulation that has binding nature and immediate applicability for the Member States. This is how the normative character of a regulation manifests itself, which is necessary to produce adaptation procedures and forms of implementation for international conventions, directives, oriented to margins of discretion of the individual national legislators, which make the functional instrument of broad legal systems with norms of identical content (Van Loon, 2002).⁴

The conflict of laws from the Treaty of Amsterdam and the creation of first-generation instruments replace the individual recasting acts, which evaluate the process of communitarization in the private international law of the Union.

The regulations lay down the rules of jurisdiction and the effectiveness of foreign decisions and acts (Liakopoulos, 2018a; Liakopoulos, 2018b; Liakopoulos, 2019a; Liakopoulos, 2019f)⁵

⁴Van Loon affirms that: “(...) act of parliament is necessary to give effect to a treaty, even where no full transformation is required, such as in Germany or Italy, there is a risk that the international and domestic roads split ways (...)”.

⁵See Council Regulations (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in OJ L 12, 16 January 2001, p. 1 and (EU) No 1215/2012 of the European Parliament

that are applicable to traditional areas, which divide their subject matter.⁶ The regulations, thus, establish a European procedure,⁷ which lays down rules for the taking of evidence of notifications.⁸

The organisational instruments, starting from Regulation no. 743/2002, establish a global framework in the field of civil judicial cooperation. Directive no. 2003/8/EC defines common rules for legal assistance with legal aid for the acts, that have established the relevant European Judicial Network⁹ as well as

and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), in OJ L 351, 20 December 2012, p. 1. Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, in OJ L 143, 30 April 2004, p. 15ss. Council Regulation (EC) No. 1347/2000 of 29 May 2000, subsequently repealed by the subsequent Regulation (EC) No. 2201/2003, replaced by the “recast” of Council Regulation (EU) 2019/1111 of 25 June 2019 concerning jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction in OJ L 178, 2 July 2019, p. 1 et seq.

⁶Regulation (EC) No. 1346/2000 on insolvency proceedings, subsequently replaced by Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015. Regulation (EU) No. 650/2012, on succession and Regulations (EU) 2016/1103 and 1104 on property regimes.

⁷Regulation (EC) No 1896/2006: establishing a European order for payment procedure, in OJ L 399, 30 December 2006, p. 1ss. Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, in OJ L 199, 31 July 2007, p. 1ss. Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, in OJ L 189, 27 June 2014, p. 59ss.

⁸Regulation (EC) No 1206/2001, replaced as of 1 July 2022 by Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence), in OJ L 405 of 2 December 2020, p. 1ss; Regulations (EC) 1348/2000 and (EC) 1393/2007 replaced by the more recent Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (‘service of documents’), *ibid.*, p. 40ss.

⁹Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial

Directive (EC) no. 52/2008 related to civil and commercial matters.¹⁰

The creation of an area of freedom, security and justice

The creation of such a space is not an immediate operation given the identification of instruments, which constitute the private international law of the Union. The parameter of different national experiences perceive and put the absence of a production of norms on conflicts of jurisdictions and uniform laws to a “Kodifikationsidee” (Jayme, Kohler, 2006), as a circumstance, which leads to the fragmentation of European regulations.

The legislator presents itself within a positive limit, which identifies the regulations of European private international law, thus developing the principle of attribution of competences. This principle involves the cancellation of national systems, which observe a plurality of norms of conflict of laws as well as the jurisdictional competence to a European order, which characterizes the European judicial space, which does not

Network in civil and commercial matters, OJ L 174, 27 June 2001, p. 25 et seq., subsequently amended by Decision 568/2009/EC of the European Parliament and of the Council of 18 June 2009, OJ L 168, 30 June 2009, p. 35ss.

¹⁰Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters in OJ L 181, 29 June 2013, p. 4ss; Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012 in OJ L 200, 26 July 2016, p. 1ss. Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims in OJ L 261, 6 August 2004, p. 15ss.

destine but configures a system of private international law of the Union, that defines itself as such.

The legal reality allows and considers, that the order of the Union is intended to cancel any plurality, that reduces the legal systems of the Member States to portions subordinated to a superior entity, which thus transforms conflict rules for these systems, into European rules intended to distribute the legislative competence, which is part of the Member States.

The foundation of the principles of subsidiarity and the useful effect is part of a system, which integrates the uniform conflict, that finalizes and replaces the systems in force in the individual Member States (Liakopoulos, 2020a).

The arguments come from a theoretical exercise, which attempts to define the features, that characterize the profiles of the process, arriving at a qualification of a context of general principles based on unitary notions. Such a constraint establishes a normative plan of the process of communitarization, according to Art. 81 TFEU, within the private international law of the Union, which has given the relative impetus. In this way, the proper functioning of an internal market is provided for within the scope of the construction of a European area of freedom, security and justice. These are elements, that assume in a unifying way the fragmentation and the character of a normative corpus, which constitutes the private international law of the

Union.

The legal infrastructure of rules defines the cross-border relationships of a citizen, where the company who works makes him free to circulate within the European cross-borders. The rules of private international law precisely characterize the material nature, which ends up creating a political plan of European integration, which allows to outline the elements of a system in the private international law of the Union (Poillot-Peruzzetto, 2011; Gardeñes Santiago, 2011).

Autonomy of the Union's private international law system

The systematic nature of the regulations governing the Union's private international law creates an autonomy that respects national legal systems, which are in contrast to uniform law. The Union's private international law applies universal instruments in areas such as civil, commercial, inheritance, and family law, thus allowing national legislation to operate continuously.

The scope for application of private international law by national legislation precludes the creation of a multilevel European system, which characterizes the sources of private international law. It refers to a plurality of systems, moving toward mutual integration (Meeusen, 2019), until unification by the European legislature, which does not assume a comprehensive character (Wilke, 2020).¹¹

¹¹Wilke affirms that: “(...) applicable across the EU (Article 288(2) clause 2

National and European legislators deal with methods and solutions, which adopt their respective instruments (Meeusen, 2019).¹² Mutual integration does not allow the concepts of autonomy of the private international law of the Union, as an expression of a logic to a system, that marks the process of communitarization to the private international law of the Union. In this way, the recognition by the Court of Justice of the Union (CJEU) of a competence to interpret uniform conflicting rules is highlighted.

In specific protocols, they place side by side the relative conventions that are stipulated autonomously and confer rules contained in their own treaties.

We refer, in this regard, to Art. 68 TEU (Kellerbauer, Klamert, Tomkin, 2024), which introduced the exercise of preliminary jurisdictions within the scope of title IV. This is a discipline, that limits the possibility of submitting questions to the CJEU only by the jurisdictions of last instance. This is thus a limit, that is based on the general and automatic competences, that come from Art. 267 TFEU (Kellerbauer, Klamert, Tomkin, 2024).

TFEU) and enjoying primacy, crowd out national law. But domestic private international law has not become irrelevant and will not be until the EU has harmonised all areas of private international law. Domestic private international law continues to apply where EU private international law does not prevail over it; this concerns all areas of private international law (...) as well as those issues excluded from the substantive scope of the EU instruments (unless, of course, another EU instrument fills the respective gap) (...).

¹²Meeusen affirms that: “(...) EU unification and Member State codification of Private International Law (...) do not appear to be mutually exclusive. Rather, approaching their relationship as a process of mutual interaction, or even reinforcement, benefits both the Member States and the EU (...).

The CJEU has not favored the path of the negative integration process, which exercises a control concerning the compatibility of national legislations with the law of the Union.¹³

On the contrary, in this way, it has contributed to a positive integration towards the development of a corpus of autonomous principles, which allow the functionalization of general questions of international law, which respect the law of the Union. This perspective takes on a particular meaning towards the expression of the nomophylactic function of the CJEU and as a central exegetic instrument of a systematic, teleological nature made, as a definition of a method of autonomous qualification (Baratta, 2004).

The impact of the work of the CJEU identifies a European dimension that limits the applicable law¹⁴ as well as the development of principles in the private international law of the Union, namely private autonomy at a level of protection on the

¹³CJEU, 9 March 1999, *Centros Ltd contro Erhvervs-og Selskabsstyrelsen*, C-212/97, ECLI:EU:C:1999:126, I-01459. 5 November 2002, *Überseering BV contro Nordic Construction Company Baumanagement GmbH (NCC)*, Causa C-208/00, ECLI:EU:C:2002:632, I-09919. 30 September 2003, *Kamer van Koophandel en Fabrieken voor Amsterdam v. Inspire Art Ltd.*, C-167/01, ECLI:EU:C:2003:512, I-10115. 2 October 2003, *Carlos Garcia Avello v. Belgian State*, C-148/02, ECLI:EU:C:2003:539, I-11632. 14 October 2008, *Stefan Grunkin and Dorothee Regina Paul*, C-353/06, ECLI:EU:C:2008:559, I-07639. 23 November 1999, *Jean-Claude Arblade and Arblade & Fils SARL and Bernard Leloup, Serge Leloup and Sofrage SARL*, joined cases C-376/96, C-369/96 and C-376/96, ECLI:EU:C:1999:575, I-08453. 15 March 2001, *André Mazzoleni and Inter Surveillance Assistance SARL, as the party civilly liable: Eric Guillaume and others*, C-165/98, ECLI:EU:C:2001:162, I-02189.

¹⁴CJEU, 9 November 2000, *Ingmar GB Ltd v Eaton Leonard Technologies Inc.*, C-381/98, ECLI:EU:C:2000:605, I-09305.

side of the weak.

The case law orientations reflect a constant tendency towards a normative level, that emancipates uniform conflict rules, which respect the individual national legislations within the autonomous context of the private international law of the Union. The recognition of the European external action (Franzina, 2017; Franzina, 2019) testifies the scope of the private international law of the Union after the Hague Conference, which confirms the existence of an autonomous system.

Art. 216 TFEU (Kellerbauer, Klamert, Tomkin, 2024) authorizes the Union to conclude an agreement with third countries, international organizations, etc., i.e. within treaties that provide for the conclusion of an agreement necessary to achieve within the scope of the Union, European policies and the objectives, which affects common rules, according to par. 2 which binds the institutions of the Union towards Member States.

Judicial cooperation in the civil sector recognizes the power to conclude treaties autonomously thanks to the support of the CJEU.¹⁵ Thus, the existence of an external exclusive competence is recognized for other instruments, which conclude, within

¹⁵CJEU, 9 November 2000, *Ingmar GB Ltd contro Eaton Leonard Technologies Inc.*, C-381/98, op. cit., “(...) some time after the European Union was granted the power to legislate in the field of Private International Law, diverging views were expressed by political institutions and Member States, as well as among scholars, regarding the reach of the parallel treaty-making power of the Union in this area (...)”.

private international law, the effectiveness of the law of the Union (Liakopoulos, 2019b).

Already the Opinion n. 1/03 of 2006 in relation to the Conclusion of the Lugano Convention¹⁶ corresponds in the wording of articles of the Regulation (EU) n. 44/2001 and the Convention of 25 October 1980 on international child abduction, as well as to the Opinion 1/13, which is connected with the Regulation brussels II-bis.¹⁷

The recognition of this type of competence takes into account the trend of expansion of the Union, which respects legislations for individual Member States, which see in a limited way the sovereignty of a stipulation for international conventions in this sector in an effective way, thus enhancing the autonomy of the European context of private international law of the Union.

¹⁶CJEU, Opinion 1/03 of 7 February 2006, Nouvelle Convention de Lugano, EC, ECLI:EU:C:2006:81, I-1145, par. 168: “(...) an examination of Regulation No 44/2001 alone therefore shows that, by reason of the global and coherent system which it establishes with regard to the recognition and enforcement of decisions (...) contains provisions relating to the jurisdiction of courts or to the recognition and enforcement of decisions, could affect those rules (...)”.

¹⁷Opinion 1/13 of 14 October 2014, Adhésion d'États tiers à la convention de La Haye, ECLI:EU:C:2014:230, par. 85 “(...) because of the overlap and the close connection between the provisions of the aforementioned regulation and those of the above mentioned convention, and in particular between the provisions laid down in Article 11 of that regulation and those contained in Chapter III of that convention, the provisions of the latter may affect the meaning, scope and effectiveness of the provisions of Regulation No 2201/2003 (...)”.

The incomplete nature of the international law of the Union

To this day, the communitarization of the international law of the Union continues to be incomplete, representing the main obstacle on a subjective and objective level, which is implemented in a homogeneous way by the Member States of the Union.

The plurality of paths, that the European legislator has chosen for the construction of a system that concerns regulations, have as their object measures connected to questions of personal status.¹⁸

Regulations adopted under a procedure of enhanced cooperation towards states, express and make part of this method. The position of the communitarization process occurred for example in Denmark and Ireland until the exit of the United Kingdom from the Union.

Protocols no. 21 and 22 of the TFEU have established for Ireland and for the United Kingdom the opting in mechanism, which notifies the will and participation for the drafting of acts in the field of private international law, with a binding manner for the adopted states. For Denmark, the opting mechanism generally provides for the stipulation of international agreements with the Union.

¹⁸We speak about regulations (EU) n. 1259/2010, (UE) 2016/1103 and (UE) 2016/1104.

At a subjective level, the theory of variable geometry is assumed in the private international law of the Union. It prejudices a systematic character with an exemplifying way of the fact, that the international private principles derived from the CJEU, find application to all the Member States of the Union.

The incomplete nature of the subjective type of the private international law of the Union thus represents an obstacle of a political nature. It creates a codification for the subject, ensuring the integration between the Member States and inevitably overcoming the systems, that characterize the legal traditions with different ways to achieve common objectives.

The incomplete nature of the private international law of the Union, in a objective way provides, through numerous regulations, a harmonization in the areas of civil and commercial matters, with the related gaps (Kramer, De Rooij, Lazić, Blauwhoff, Frohn, 2012).

Gaps that lead systematically to certain paths, with immediate way to citizens, as well as to the enterprises of the Union observing thus in areas such as family law main gaps. These determining the applicable law, which concerns issues related to representation for property rights, trusts, arbitration companies, etc. They concerns family matters, personal especially in the area of marriage and issues related to the name, adoption and parenthood, protection for adults and the capacity of persons.¹⁹

¹⁹Proposal of 7 December 2022 for a new regulation on jurisdiction, applicable

The incomplete nature, at the objective level of European private international law, does not concern the precise questions that reveal the absence of uniform private international rules of general nature. Thus, the object of regulation is indicated in an indistinct manner for the questions, which have relevance to the scope and object in the matter of conflicts of laws (Van Overbeck, 1992; Wilke, 2016).

The questions of ascertainment for the application of foreign law show the problem of qualification, which is connected with the adaptation of precise questions to a referral mechanism as well as the reference of multi-legislative systems, as limits of application of foreign law. These concepts constitute conflict rules for the connecting criteria, which provide for the breadth attributable and delimited to the autonomy of the parties.

The non-regulation of the European legislator leads to the definition of foreign law and to the tendency, which regulates a lack of homogeneity of the general part of private international law of the Union. At a regulatory level, the individual regulations, even in a partial way, are connected with the problem of referral for multi-legislative systems, which respect the regulation, that promotes differentiated solutions. Such an adaptation is the object of precise discipline within the scope of regulations in the sector of succession and patrimonial

law and recognition of decisions and acceptance of authentic instruments in matters of parenthood and the creation of a European certificate of parenthood COM (2022) 695.

regimes.²⁰

The public order clause is part of uniform law instruments. It does not take into account questions of consequences that set limits. The necessary application before the definition of the Regulation Rome I presents, in a partial way, other instruments relating to divergences primarily of a technical nature for the succession regulations based on art. 30. This article indicates, as special rules, the restrictions on the succession of assets, according to the Regulation n. 1259/2010 (Liakopoulos, 2019c).²¹

It is an approach that consistently undermines the private international law of the Union, which concerns rules of individual regulations relating to the implementation of objectives at the top of the same system (De Lima Pinheiro, 2012-2013; Meeusen, 2019; Wilke, 2020).²²

The lack of common rules on the procedural treatment and application of foreign law prevents the achievement of

²⁰See Art. 31 Regulation (EU) n. 650/2012 and art. 29 of the regulations 2106/1103 and 2016/1104.

²¹See Art. 9 of the regulation Rome I and art. 16 of the regulation Rome II.

²²Meeusen affirms that: “(...) absence of a general part threatens the uniform application of the EU measures involved and creates uncertainty which is directly opposite to the goal of European harmonisation (...)”. De Lima Pinheiro affirms that: “(...) purpose of the PIL unification at the EU level can to a certain extent be undermined by different solutions regarding the interpretation and application of EU instruments in matters such as characterisation, fraude à la loi, and application of foreign law (...) can be challenged in matters that are, in principle, covered by these instruments, such as renvoi, public policy and mandatory rules (...)”. Wilke refers that: “(...) inconsistent set of rules is at odds with the goals of predictability of the outcome of litigation and legal certainty. Inconsistent solutions lead to cases coming out differently despite being about the same issue (...)”.

predictable uniform solutions to the proper functioning of the internal market for the realization of a European area of freedom, justice and security. Thus, a codification is evaluated for the advantages existing within the general part of international law, which defines a rule, that seeks to harmonize issues, that are the subject of our investigation (Wilke, 2020).

The lack of regulations of the private international law relating to the procedural treatment of foreign law

The procedural treatment of foreign law, according to the European legislator, is moving through the Regulation Rome I and II. In particular, art. 1.3 defines the respective areas for the material application, which provides for non-application except problems relating to evidence and procedure. The exceptions provided for by the Rome Convention, according to art. 1.2., letter h), do not require any other explanation than their basis relating to the general principle, that is, the *lex fori regit processum*.²³

The relative process of the Regulation Rome II (Dickinson, 2008; Requejo Isidro, 2019) encounters issues under investigation, which are effective in the subject of discussion among the drafters (McParland, 2015).²⁴ The position of the

²³Proposal for a Regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations ('ROME II'), COM/2003/0427 final-COD 2003/0168. Explanatory memorandum, p. 10.

²⁴McParland affirms "(...) forum court that, under its own procedural rules, does

European Parliament²⁵ is based on art. 12 and art. 13 of the Regulation. In particular, art. 13 states:

“(...) submit the claim or counterclaim before a national court or tribunal falling within the scope of this Regulation (...)”
and continues with art. 13, which:

“(...) establishes ex officio the content of the foreign law. For this purpose, the cooperation of the parties may be requested (...) content of the foreign law and the parties consent to it, the law of the court seised shall apply (...)”.

This relevance expresses the intention to delve deeper into the question of the European Commission by rejecting its own when the duty indicates the applicable law, that observes the duty of the judge to know ex officio the relevant content of a foreign law:

“(...) Member States would not be able to apply the rule as they do not have proper structures in place to enable the courts to apply the foreign law in this way (...)”.²⁶

The Council according to the Common Position of 25 September 2006 defines the need to examine the issue in context, which rejects the amendments of the relevant proposals.²⁷

not apply foreign law ex officio, is under no obligation to do so under the Rome I Regulation (...) suggestion this should be the case during the legislative development of either the Convention or the Regulation (...)”.

²⁵Position of the European Parliament adopted at first reading on 6 July 2005 with a view to the adoption of Regulation (EC) No /2005 of the European Parliament and of the Council on the law applicable to non-contractual obligations ('ROME II', P6_TC1-COD(2003)0168, in OJ C 157E of 6 July 2006, p. 371ss.

²⁶Amended proposal for a European Parliament and Council regulation on the law applicable to non-contractual obligations (Rome II) (presented by the Commission pursuant to Article 250 (2) of the EC Treaty), 21 February 2006, COM(2006) 83 final 2003/0168 (COD), p. 7.

²⁷Common Position (EC) No 22/2006 adopted by the Council on 25 September 2006 with a view to adopting a regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations ('ROME II') (2006/C 289 E/04), OJ C 289E, 28 November 2006, p. 68ss.

The Regulation during the process of the European Commission has limited itself to the reference of the review clause, which according to Art. 30, par. 1, the European Commission has presented to the European Parliament, the Council and the European Economic and Social Committee a final report on the application of the regulation as:

“(...) a study on the foreign law (...) dealt with in the various jurisdictions and the extent to which the judges of the Member States apply foreign law in practice following this Regulation (...)” (Requejo Isidro, 2019).

In a declaration on foreign law it was stated that:

“(...) the Commission, aware of the fact that Member States follow different practices as regards the treatment of foreign law, will publish (...) after the entry into force of the "Rome II" Regulation (...) a horizontal study on the application of foreign law in civil and commercial matters by the courts of the Member States, in view of the objectives of the Hague Programme (...) take appropriate measures (...) promoted in the process of drafting the Rome II Regulation do not, however, represent the only unsuccessful attempts to introduce uniform rules on the procedural treatment of foreign law (...)”.

According to the Report, which concerned recommendations to the Commission in the field of succession and wills,²⁸ the European Parliament stated:

“(...) the legislative instrument to be adopted [should] indicate the ways and means by which the authorities called upon to apply a foreign law will have to ascertain its content, as well as the remedies in the event of failure to ascertain (...)”.

The Regulation is thus limited to the competent authorities, which concern the European judicial network:

“(...) another available means that facilitates the understanding of a foreign law (...)”.

Particular attention, also, should be paid to Recital no. 14 of the Regulation of Rome no. 1259/2010 and to how the European

²⁸A6-0359/2006 of 16 October 2006.

institutions and especially the European Commission have chosen not to intervene in an area, which defines a uniform rule aware of the divergences of the national legislations of a procedural treatment in foreign law and on the competences that derive from it. In the Communication from the Commission to the European Parliament and the Council it was stated that:

“(...) the proper functioning of the European judicial area (...) requires the application of the law of another Member State by a national jurisdiction (...) the Union should reflect on how to avoid the disparity between the practices in force in this area (...)”²⁹.

The limiting role of the European Judicial Network

It was the Decision No. 2001/470/EU of 28 May 2001 which amended the Decision No. 568/2009/EU, which highlighted the institutional action of a European Judicial Network.³⁰ This is a structure with information tasks. The introduction of contact points has broadened the dialogue between the authorities of the Member States on foreign law.

The European Judicial Network has paved the way towards the renunciation of a definition of a uniform rule for the procedural treatment of foreign law in favor of techniques, which express the role of cooperation, providing adequate and effective access to justice.

The functions recognized for the network, according to art. 3,

²⁹Of 10 June 2009, COM(2009) 262.

³⁰Document 02001D0470-20110101, Consolidated text: Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (2001/470/EC).

have as their objective:

“(...) to facilitate judicial cooperation between Member States (...) the design, progressive preparation and updating of an information system intended for the members of the network (paragraph 1 letter a) (...) to facilitate effective access to justice through information actions on the functioning of Community acts and international instruments relating to judicial cooperation in civil and commercial matters (paragraph 1 letter b) (...)”.

The network, thus, develops its activity, according to par. 2, letter a), namely:

“(...) the correct conduct of proceedings with transnational implications facilitate requests for judicial cooperation between Member States, in particular where no Community act or international instrument applies (...)” and according to par. 2, letter b):

“(...) to ensure effective and practical application of Community acts or conventions in force between two or more Member States (...)”.

The function of these objectives provides for the possibility for the judicial authority to turn to a network, that obtains information on a content for the law. This main source to the website leads to information, which is updated in the official languages of the Union. The network, thus implements an information system for the public. In this regard, par. 1, letter c), states:

“(...) the internal law of the Member States, with particular reference to access to justice (par. 2, letter c) (...) and the contact according to art. 5 of magistrates and other officials. Instead, par. 2, letter c), relating to the other authorities of their own Member State states “(...) the application of the law of another Member State (...)”.³¹

Further information is thus identified, which excludes the need for a uniform rule for the procedural treatment of foreign law,

³¹Recital 8 of Decision No. 568/2009/EC states that “(...) Community act or an international instrument indicates the law of another Member State as applicable, the contact points of the Network should be involved in informing the judicial and extrajudicial authorities of the Member States on the content of that foreign law (...)”.

thus verifying the context of regulations on private international law, as extended and within the applied scope of the network. According to Regulation No. 4/2009, the appropriate clauses precede references of the recital and oblige Member States to provide information relating to the content of national laws and to matters that are the subject of the regulation.³²

Art. 70, letters a) and c) of the Regulation states:

“(…) with regard to the national legal system and procedures in matters of maintenance obligations (...) the methods which ensure effective access to justice (...) notwithstanding what is expressly established in the corresponding regulation considered (...) in order to designate the applicable law, spouses must have access to up-to-date information on the essential aspects of national and Union law and on procedures in matters of divorce and legal separation (...) access to appropriate quality information, the Commission regularly updates it in the information system intended for the public which uses the Internet, established by Decision 2001/470/EU (...)”.

Article 17 of Regulation No. 1259/2010 established an obligation for Member States to communicate to the European Commission national provisions:

“(…) (a) the formal requirements for agreements on the choice of applicable law (...); (b) the possibility of designating the applicable law (...) this information must be (...) publicly accessible (...) in particular through the website of the European Judicial Network in civil and commercial matters (...)”.

According to Article 77 of Regulation No. 650/2012, Member States must provide the European Commission with:

“(…) a summary of their national legislation and procedures relating to succession (...) information indicating all documents or information usually required for the purposes of registration of immovable property situated in their territories (...)”.

³²Recital n. 39 of the Regulation (EU) n. 4/2009, recital 14 of the Regulation (EU) 1259/2010, recital 75 of the Regulation (EU) n. 650/2012, recital 67 of the Regulation (UE) n. 2016/1103 and recital 65 of the Regulation (EU) n. 2016/1104.

Articles 63 of the regulations on property regimes state a:

“(...) brief summary of their national legislation and procedures (...)”.

Art. 86 of Regulation No. 848/2015 deals with national bankruptcy legislation and procedures. In particular, it notes that:

“(...) the decision establishing the network as a matter of attention to the European legislator makes accessible to citizens information that is generic for national legislations, that are based on the aspects of the applicable law that is recalled”.

As a useful reference, we note the recital No. 14 of Regulation No. 1259/2010, which refers to the European Judicial Network:

“(...) intervene to provide assistance to the judicial authorities on the content of foreign law (...)”.

A similar limited and recognized role for the European Judicial Network, within the scope of adaptation of the regulation on succession matters, is recital No. 16 and in property regimes recital No. 25.

It is the same Commission that in the relevant report for the amendments to Regulation (EU) No. 2201/2003 referred to Article 20-quater, which states:

“(...) where the law of another Member State applies, the judicial authority may avail itself of the judicial network in civil and commercial matters to obtain information on its contents (...)”.

The establishment of the European judicial network and the assignment of information tasks to the legislator of the Union refers to the lack of uniformity of rules, that ascertain foreign law that practically overcomes the difficulties arising from the relative circumstances. As a result, foreign law is defined within the European system of private international law of the Union.

These are elements that indicate and scale down the network, that thinks exclusively for the Member States a universal opening, that characterizes the regulations on applicable law for the national laws of the states (Beaumont, 2019). This aspect is supported by the network, according to the London Convention of 1968, in an inefficient way.

The indexes for the regulations seem to be excessively unbalanced in favor of particular information obligations intended for the public. This is a case by case system and the judicial authorities of the Member States, as well as the limits of the network must be found as a positive fact.

The European legislator creates a non-sectoral instrument, that recognizes non-specific purposes. In this spirit, the context of private international law is witnessed to an abandonment of normative instruments, that characterise its scope in a general and systemic way.

Definition of foreign law within the system of the private international law of the Union. Conflict rules and plurality of procedural models of a national nature

From the previous paragraphs we have understood that the lack of rules on the procedural treatment and the application of foreign law puts the European legislator in the front line, which tries to close the gaps with a limited and partial way of the

European judicial network for information functions.

Valuing the need for intervention means that the current state attributes to the discipline questions, that are the subject to rules of individual national systems, that satisfy the system of private international law of the Union.

The benefits lead to the creation of uniform conflict rules for the regulation of cases, which are characterized by elements of internationality at a level of harmony for the solutions. It is not accidental that the legislator of the Union within the perspective for the creation of an area of freedom, justice and security for the proper functioning of a national market pursues the alternative path of substantial harmonization. This choice leads to a character of uniformity of private international law, which is connected with European integration by calling for objectives of regional conflict rules, that reach precise and uniform outcomes.

Predictability of solutions, uniformity and legal certainty

Uniform law and European Regulation, as an excellent and normative instruments, establish a uniform discipline that achieves the objective (Ferrari, 2021) of a necessity applied between Member States without divergences.

The rules claim and explain: “in a homogeneous way its effects in the different states”. The uniform character of private international law of national rules, which are different from the

procedural treatment to foreign law, is thus questioned in a general way. This argument is linked to a profile of uniformity, that does not consider in a sufficient way the necessary position of a common rule of a procedural treatment for the application of foreign law.

The rules of private international law of the Union have become instrumental in nature and with political effects for the construction of an economic, social space of integration. This needs for cross-border cases to receive legal treatment. It also ensures the level of legal certainty and predictability for solutions (Kruger, 2016).

The value that is connected with regulation, namely the requirement of legal certainty, identifies as an essential element the space³³ and designates the applicable law (Krueger, 2016)³⁴ in the following way:

“(...) the proper functioning of the internal market requires, that the conflict of laws rules in force in the Member States designate the same national law (...) both the country of the judge seized, in order to promote the predictability of the outcome of judicial disputes (...) the certainty about the applicable law and the free circulation of judgments (...)”.³⁵

The subjective position and the value of legal certainty assume for the regulation, according to recital no. 16 of the Regulation

³³Recital n. 14 of the Regulation Rome II.

³⁴See recital no. 39 of the regulation Rome I that states: “(...) legal certainty would require a clear definition of habitual residence, in particular as regards companies, associations and legal persons (...)”. Contrary to Article 60, paragraph 1, of Regulation (EC) No. 44/2001: “(...) the conflict of laws rule should be limited to a single criterion, since otherwise the parties would be unable to foresee which law would be applicable to their situation (...)”.

³⁵Recital n. 6 of the Regulation Rome I and Rome II.

of Rome I, the perspective for the parties that foresee and contribute to the relative achievement of the general objective for it as well as conflict of laws rules that offer a high degree of predictability.

Regulations 1259/2010 and 650/2012 on the matter state that:

“(...) should establish a clear and comprehensive legal framework on the law applicable to divorce and legal separation in the participating Member States to ensure citizens adequate solutions (...) legal certainty, predictability and flexibility, and prevent situations where one spouse applies for divorce (...) to ensure that the proceedings are governed by a law which he or she considers most favourable to the protection of his or her interests (...)”³⁶ it is necessary that this Regulation should enable them to know in advance the law applicable to their succession (...) introduce harmonised rules on conflict of laws to avoid contradictory results (...) ensure that the succession is governed by a foreseeable law with which it is closely connected (...) legal certainty to avoid fragmentation of the succession (...) should govern the entire succession (...) regardless of their nature or whether they are located in another Member State or in a third state (...)”.³⁷

Recital no. 42 and 43 of the Regulation 2016/1104 and 1103 highlights the possibility for spouses and registered partners to know in advance the law applicable to their property regime and the property effects as a necessary means. In this regard, it states:

“(...) citizens may benefit, in compliance with legal certainty, from the advantages offered by the internal market (...)”.

The reference to legal certainty influences the use of connecting factors for jurisdictional titles. The Regulation no. 4/2009 and Rome II have the possibility for an *optio legis*, that identifies the competent judge to admit, increase, strengthen the relative legal

³⁶Recital n. 9 of the Regulation Rome III.

³⁷Recital n. 37 of the regulation Rome III.

certainty (Kruger, 2016).

The lack of a rule defines in a uniform way the procedural treatment for foreign law, which poses an obstacle to the achievement of objectives, which define the essence of a European system for private international law.

The introduction of a procedure for foreign law, as a circumstance depends on the relevance of the dispositive principle of a narrow perspective, that recognizes and rejects the respective systems of an optional nature of conflict rules. It is observed that the models of national legal systems and the diversified solutions directly and indirectly attribute to the parties an availability for the conflict rule, which is incompatible with needs, which derive from the uniform character of the rules of private international law (Von Overberg, 1992; De Boer, 1996; Jänterä-Jareborg, 2003; Nishitani, 2017).³⁸

This is a profile that detects the treatment, that conflict rules reserved within the legal system of the judge, who is called to rule on a dispute, that characterizes the elements of

³⁸Nishitani affirms that: “(...) approaches to the mandatory or facultative application of conflicts rules and the ascertainment and application of foreign law may well affect the operation of uniform conflict of laws rules that exist in form of EU regulations (...)”. Jänterä-Jareborg affirms that: “(...) unified choice of law rules can only be achieved if the courts and other competent authorities of the Member States are under an obligation to ex officio apply these rules and the law they refer to (...)”. De Boer affirms that: “(...) uniform choice of law is not created for its aesthetic beauty or for the pleasure of devotees to standardization (...) contributes to the prevention of forum shopping and reduces the risk of limping relationships, both of which are inconveniences to the parties rather than to the communities involved (...) first and foremost, unification is meant to serve the interest of the parties (...) ex officio application of a convention is hardly a guarantee of uniform results (...)”.

internationality. The material law is thus applied and is different each time.

The jurisdiction attributed by a foreign judge to another Member State is a plausible hypothesis for the contractual sector and leads back to the category of rights available according to the regulation being part of the *lex fori* of the conflict rules.

The criticisms for the objectives of uniformity are under European conflict rules, which differentiate the profiles relating to the ascertainment of foreign law. It is considered that the prevailing conception of conflict rules, as a fact for the burden of proof of a content of foreign law, falls on parties that emphasize the optional nature of a conflict rule, that leads to the certainty of the same consequences.

The instruments and standards are rigid for the legal systems, that are dependent on the conduct of the parties. The national judge thus evaluates the evidence relating to the content of a foreign law (Jänterä-Jareborg, 2003).³⁹

In an immediate way, the national judge and in the moment of impossibility for the ascertainment of the foreign law (Jänterä-Jareborg, 2003)⁴⁰ applies the law of the foreign forum, which recalls any other connecting criteria, which are provided for in

³⁹Jänterä-Jareborg: “(...) Member States, the same standard must be applied when evaluating the sufficiency of proof of foreign law (...) also the same methods should be used when ascertaining the content of foreign law (...)”.

⁴⁰Jänterä-Jareborg affirms that: “(...) the content of the foreign law cannot be established, the same solutions should be applied (...)”.

the same conflict rule. These are valid arguments that refer to a profile requiring certainty, deriving from a uniform character for the conflict rules. The free disposition of the parties and their nature depends, therefore, on the individual instances, in this regard.

Most solutions adopt and observe the principle of application, that intervenes in the mechanism, functioning of the norm of conflict with foreign law, operating in the interpretation of foreign law capable of compromising the uniformity and certainty of the private international law of the Union, thus requiring its proper functioning. So it is relevant, that the diversity of laws, that are different between the Member States of the Union, produce rigorous attitudes to national judges, according to the norm that calls for their correct application achieving, in such a way, the objectives of the Union. Such a responsibility, according to Art. 5, par. 2 of the Rome II, guarantees and satisfies material policies, which include and produce the product in question predetermining conditions, that engage the responsibility.

The judge of a Member State applies in a non-genuine manner the law of the country that purchased the product, i.e. the law that refers to, Art. 5, par. 2, lett. b) of the Regulation. The product has been marketed in a country other than the country, in which the purchaser resides due to the responsible position,

which is different from the position of other competing companies. It undertakes to market the products of the country in question.

Companies fail to pre-establish the legal risks that are connected with the activity. Consumers exposed to the danger enjoy, on the other hand, a differentiated protection, i.e. by not making purchases from outside their own country and in the market that is free of national barriers.

The connection between control and uniformity in private international law is part of the superior jurisdictions of foreign laws. Thus, the superior jurisdictions for the application of foreign law are observed, connected and indirectly guarantee a system of uniformity for the application of the conflict rules that are part of it.⁴¹

Realizing and following private interests, that are extraneous to the judgments before the superior jurisdictions justifies the attribution of a control of application of foreign law, as a requirement of certainty of predictability for the solutions that come from it.⁴²

⁴¹“(…) correct observance of the choice-of law rule (...) requires the correct application of the applicable foreign law. Accordingly, the incorrect application of foreign law means a breach of the domestic choice of law rule (...)”.

⁴²Jäterä-Jareborg affirms that: “(...) the parties wish to structure their relations in advance by subjecting them to foreign law, this is best served through a review forum equipped with qualified judges and extensive research facilities (...) served by knowing in advance that a given choice of law rule refers to foreign law as understood in the country of origin (...)”.

The forum shopping system

The various divergences lead to an instrumental selection, that activates the rights obtained in a determined way from disputes with international characteristics in various forums, as an outcome that considers forum shopping favorable (Lalive, 1977; Esplugues Mota, Iglesias, Palao, 2011).

Forum shopping is based on a context harmonized with European standards in the field of private international law, which considers admissible cases within limits that do not lead to an abusive exercise of the right (Nuyts, 2003).

The Brussels I and Brussels I-bis regulations establish a dispute for alternative forums, which generally respect the defendant's domicile and the multiplicity of jurisdiction titles, which characterize the procedural regulations relating to matrimonial matters and parental authority over children (Nuyts, 2003).⁴³

The subject of conflict of laws is a phenomenon, which shows in a negative way, starting from the Rome Convention of 1980, the related Giuliano/Lagarde report.

The application of foreign law by national judgments is

⁴³Nuyts, affirms that: “(...) probablement le plus frappant d’incitation au forum shopping peut être trouvé dans le règlement du Conseil n° 1347/2000 sur la compétence et l’effet des décisions en matière matrimoniale et de responsabilité parentale (...) L’article 2 de ce texte prévoit que l’action en divorce, en séparation de corps ou en annulation du mariage peut être portée devant les tribunaux désignés par une liste alternative de chefs de compétence fondés sur l’utilisation de pas moins de sept critères de rattachement différents! (...) de sorte que c’est à l’époux demandeur (ou en cas d’action conjointe aux époux) qu’il appartiendra, dans chaque cas d’espèce, de faire un choix entre les différents tribunaux disponibles. Il va de soi que ce choix sera dicté, en pratique, par les seuls intérêts du demandeur (...)”.

increasingly considered to a continuous expansion of transnational law in the private law sector. It is a perspective that prevents and respects rules on conflicts of laws, which find application to the law independently of the state that is pronounced by the decision.

In this regard, the advocate generale Bot in the *Color Drack* case affirms:

“(...) the Brussels Convention provides for options of jurisdiction which allow the plaintiff to choose (...) the Member States could fear that the plaintiff would choose to act before a court (...) the law applied by the latter would be more favourable to him. The Rome Convention aims to reduce this risk (...) forum shopping (...) by determining the substantive national law applicable by the court seised of the dispute (...) it therefore aims to ensure that the solution on the merits is the same, regardless of the court chosen by the parties in dispute (...)”.⁴⁴

The link between the prevention of the phenomenon of forum shopping and the proper functioning of an internal market finds definitive sanction in Regulation Rome I and II and in particular in recital no. 6 of the Regulation on insolvency. Recital no. 5 states, in this regard, that:

“(...) a proper functioning of the internal market (...) dissuades the parties from transferring assets or legal proceedings (...) to the other with the intention of obtaining a more favourable legal position to the detriment of the body of creditors (...)”.⁴⁵

The Advocate General Saugmandsgaard Øe in the *Soha Sahyouni v. Raja Mamisch* case highlighted that the:

“(...) Regulation (no. 1259/2010) seeks to standardise the conflict of laws rules (...) to increase legal certainty, predictability and flexibility, while preventing the risk of forum shopping, in international separation

⁴⁴CJEU, 03 May 2007, *Color Drack GmbH v. Lexx International Vertriebs GmbH*, C-386/05, ECLI:EU:C:2007:105, I-03699, par. 62.

⁴⁵Recital n. 4 of the Regulation (EU) n. 1346/2000.

proceedings (...) the free movement of persons within the Union (...)”.⁴⁶

The diversity of procedural rules on the treatment of foreign law contribute to the phenomenon of forum shopping. The answer is immediate and thinks about the main motivations that lead the parties to be involved in an international dispute, to an instrumental selection of their own jurisdiction (Bell, 2003).

The procedural nature of the rules defining foreign law in the legal system of the forum,⁴⁷ are rules that cover the profiles, as a phenomenon for issues relating to evidence and the distribution of costs, procedural expenses, which have a decisive role in the definition of a favorable nature to their dispute. The arguments are the same and highlight the need that guarantees transnational disputes with uniform and precise outcomes.

In some jurisdictions, such as the common law system and the Spanish one, the content of foreign law is part of an object of proof submitted by the parties with a burden, which weighs differently between the defendant and the plaintiff and affects the choice, that establishes a transnational dispute in a specific forum.

Circumstances of a contextual nature are also added for the costs, which are ascertained in foreign law, leading to the systems having an impartiality of their judges in a specific

⁴⁶CJEU, 20 December 2017, Soha Sahyouni v. Raja Mamisch, C-372/16, ECLI:EU:C:2017:686, published in the electronic Reports of the cases, par. 86.

⁴⁷CJEU, 28 September 1999, GIE Groupe Concorde and others, C-440/97, ECLI:EU:C:1999:146, I-06307, par. 19: “(...) lesson of a forum in function of the advantages that can derive from substantive (or even procedural) law (...)”.

forum, extended in time from system to system, like a proceeding that undergoes a certain assessment.

The choice of a specific jurisdiction is binding for the opinions issued by experts and influences the final decision of the judge. It goes beyond the tendency to adopt rigid standards for evidence and the content of the foreign law as a precise standard.

The international private law nature affects the approach of a judge of a specific forum, that has the functioning of the conflict rules. The homeward trend is posed by the jurisdictional authorities of a legal system, that pushes for the application of the law of the forum, that respects and refers to conflict rules favoring decisions, which are attractive to some specific jurisdictions. This is a diversity, that affects the material laws, which are competent and define a case presenting elements of internationality. This circumstance for forum shopping is partial from the unification of substantive laws for the rules, that ascertain and apply foreign law in different manifestations, which do not have direct impact and measure of their own application of an effective nature, that arrives at an outcome sought by all parties.

The principle of fair trial

The order of the Union is central to access to justice. It is a general value, that protects the order of the Union to a fair trial. From this perspective, the impact of this value on problems relating to foreign law in the order of the forum has its own assessment (Stuiju, 2016), through the rich jurisprudence of the European Court of Human Rights (ECtHR),⁴⁸ as well as the resolution of the Institut de Droit International.⁴⁹

The interventions try to understand the extent of the issues, that are the object of the present investigation. The problem of the appeal as a means of proof and as an auxiliary tool for opinions and testimonies, within the content of foreign law issued by experts financed by the parties, is a practice that leads to the violation of the principle of equality of arms for the subjects, who are involved in a dispute. In this way, the opportunity to present elements, that form the basis of the law is guaranteed in conditions, which define equality without disadvantages.

The use of experts, financed by subjects, who are involved in their own proceedings, is not excessive. It influences the law. The impartial judge is independent and asks to pronounce from

⁴⁸ECtHR, n. 75116/01, Karalyos and Huber v. Hungary and Greece of 6 April 2004.

⁴⁹Institut de Droit International, Reportt of 4th Commission. Human Rights and Private International Law of 4 September 2021: <https://www.idi-iil.org/app/uploads/2021/05/Report-4th-commission-human-rights-and-private-international-law-vol-81-yearbook-online-session.pdf> Accessed on 10.09.2025.

conclusions, which are oriented to a decision of a certain sense. It asks for the impossibility of a construction of the content of foreign law and the application to a different law, that is competent and regulates the case of an incomplete knowledge, lacking in the same interpretation and application, in this regard, which does not prejudice the law that acts in court. It guarantees the effective application of the rules by the judge.

The rejection of the application and the failure to apply foreign law constitutes the denial of justice. It is realized by the judge, who applies a law, which is different and excessively referred to as well as to the expectations of the parties and the rights, that are guaranteed (Fentiman, 1998; Stuij, 2016).⁵⁰

The right to a fair trial risks the difficulties arising from the need to ascertain the content of a foreign law, which in time prolongs its own proceedings. The efficient means at the level of cooperation between judicial authorities significantly entails delays in the definition of their disputes.

In *Karalyos and Huber v. Hungary and Greece* case of the ECtHR the facts underlying the decision as well as the refusal of the foreign judge to apply the law of the forum⁵¹ thus obtaining

⁵⁰Fentiman affirms that: “(...) practice it will make little difference whether the result is outright dismissal or the application of English law. In either event, the claimant’s preferred law will not be applied and, presumably, foreign law would not have been relied upon at all unless it offered an advantage lacking under English law (...)”.

⁵¹Stuij affirms that: “(...) information on Greek law was still necessary. It considered that the Greek authorities’ refusal to provide information on a complex legal issue did not render impossible, as such, the establishment of the contents of the

the spouses to appeal to the court based on Art. 6, par. 1 ECHR.

The ECtHR took a position for the dispute stating:

“(...) arguments from the defense of the Hungarian government (...) noted that the difficulties arising from the application of a foreign law could not justify such a significant prolongation of the time in the definition of the dispute (...) regardless of any dilatory conduct put in place by the parties in the trial, it was in any case up to the Hungarian judge to ensure a correct administration of justice (...)”.

As a point of criticism is the conduct of the Hungarian judicial authorities, which according to the requests for information to the Greek authorities, have not provided for the sending of a necessary documentation for the renewals, which are addressed to direct requests to the defendant of the competent administration.

The procedure and the use of verbal notes and telephone for communications between the Hungarian and Greek authorities are conducted and determine the related delays named as: “largely imputable to the Hungarian State”. According to the violation of Art. 6, par. 1 of the ECHR:

“(...) the applicants’ case was not heard within a reasonable time (...) an order against the Hungarian government to pay compensation in the total amount of 10,000 Hungarian forints to each of the two spouses (par. 44) (...) declining its jurisdiction - with respect to the violation of the same rule by the Greek authorities since any possible failure on the part of the Greek authorities to respect the Greek-Hungarian bilateral Treaty on Legal Assistance or the European Convention on Information on Foreign Law cannot be the subject matter of a case before the Court (par. 41) (...)”.

The Institut de Droit International has devoted itself to the subject of “Droits de la personne humaine et droit international

foreign law in question. The District Court therefore held that Hungarian law could not be applied (...)”.

privé”.⁵² This is a document that expresses and guarantees the right to a fair trial as well as the related standards of protection within the scope of transnational disputes. Art. 6 refers to the:

“(…) application des règles nationales de procédure civile et commerciale aux litiges transfrontières doit tenir compte des intérêts de toutes les parties à une protection juridique et respecter leur droit à un procès équitable (...) l’intérêt de l’efficacité de la protection juridique des parties, les Etats devraient promouvoir la coopération judiciaire internationale (...) l’Etat requérant et l’Etat requis doivent respecter le droit des parties privées à un procès équitable, notamment en répondant à la requête dans un délai raisonnable (...)”

referred for reasons identified to the problem of knowledge of foreign law.

Private international law of the Union and Art. 81 TFEU as a legal basis that defines foreign law

The system of private international law of the Union highlights the problems for the procedural treatment and the application of foreign law, that assumes such functioning. Predictability, uniformity, certainty for disputes as principles of resolution for cross-border disputes and access to justice respect the good functioning of a national market and the administration of justice with national rules on a procedural treatment of foreign law.

The divergences and solutions adopted by the Member States do not coordinate national law with European conflict rules,

524ème Commission. Droits de la personne humaine et droit international privé,
4 September 2021:
<https://www.idi-iil.org/en/publications-par-categorie/resolutions/> .Accessed on
10.09.2025.

according to the coherence of the system (Françoise, 2022)⁵³ for objects, citizens, companies, that benefit from the process of European integration and communitarization in a discipline for cross-border disputes. This justifies a level of reasoning, that goes beyond issues that are the object of our analysis and of the principle *lex fori regit processum* in favor of a uniform rule. Such considerations thus allow the intervention of the European legislator in a generic way as a basis for the action of the Union, according to Art. 3.2. TEU (Françoise, 2020).

The principles of subsidiarity and proportionality seek to regulate the attribution of competences, according to Art. 81 TFEU (Corneloup, Joubert, 2011; Kellerbauer, Klamert, Tomkin, 2024).

The rule expressly recognizes the power of the European Parliament and the Council, which adopts the ordinary procedure in family matters to reach, according to the Council, measures that follow and promote the compatibility of rules applicable to the Member States in the area of conflicts of laws such as access to justice. This object and the action of the European legislator, through the promotion of a compatibility of procedural rules in the Member States, promote the correct conduct of a civil trial.

The criteria, that guide the European legislator in a configuration of a uniform rule, which defines foreign law to a

⁵³See Art. 7 TFEU.

system of private international law of the Union, are identified. The same happens with criteria that identify the principles and values of a general European system for the relationships between the systems of the Member States and the legislation of the Union in the area of conflicts of laws.

Foreign law through the principles of the law of the Union

From the previous paragraphs it is noted that the system of the private international law of the Union is based on some guiding principles in various different categories, such as true and general principles, that assume a rank recognized by a plurality of states and principles, which characterize and affect a single evolving legal system.

The diversified factors among the conflicting systems are oriented to a work of codification promoted by state legislators for the international private solutions, that consider the general character and the possible reasons, that connect the local needs and the jurisprudential developments, that reflect the traditions of the judges in different countries and the diversity of the systems of material law.

The system of general principles within the private international law of the Union finds space for national systems within a principle of harmony of decisions, considerations of a political material nature for a construction of a conflict rule, which goes

beyond the objective conception.

The common principles assume a relevance for private international law according to the principle of equality and the prohibition of discrimination and the principle of proportionality, as principles relating to the interpretation of norms referable to various categories of values, that is, a guarantee of the fundamental rights of the human person.

Such a structural character is relevant for the functioning of the internal market and of an area of freedom, security and justice, a principle that does not respond to a precise definition (Neuvonen, Ziegler, 2022) but identifies individual traits of a distinctive nature for the function, object of its autonomous and independent nature of the law.

In this spirit, the CJEU states that:

“(...) legislative legislation (...) implemented by means of an act of secondary Community law (...) has a fundamental character with which they can be endowed (...) the high level of protection for individuals (...) their partly unwritten nature (...) are not expressly mentioned by the central founding Treaties, in their identification (...) and by the role assumed by the Court of Justice (...)”.⁵⁴

As regards the context, that affirms the principles of a configuration in European private international law that shapes the essential and distinctive features of a double meaning thanks to an abstract and general character, it guarantees a high level of intra-systemic coherence, that is examined in a horizontal sense, i.e. between rules ordered and contained in their own regulations

⁵⁴CJEU, 15 October 2009, Audiolux SA and others, C-101/08, ECLI:EU:C:2009:626, I-09823, par. 63.

in a vertical sense.

The rules, that are part of the secondary law and aligned as superordinate to the values, that these principles are part of the private international law of the Union, develop a functional direction in front of the needs of a spirit of European integration. The general principles of Union law, through the interpretation of the CJEU, allow to contribute to the creation of a system of private international law of the Union to fill gaps in existing regulations.

Within this framework, the reason for proposing a uniform rule for procedural treatment of the application of the law is demonstrated, which refers to conflict rules contained in the regulations of the Union and addressed to the general principles of the Union.⁵⁵ Thus, the questions, that define the relevant foreign law are selected, as values pertinent to these expressed principles.

The procedural treatment of the uniform conflict rule and the primacy of the law of the Union

A topic that has always been lacking, shady since the birth of the Union, was when the judge comes to call and apply foreign law, as part of a conception of an optional nature for the conflict

⁵⁵See the observations of the GROUPE EUROPÉEN DE DROIT INTERNATIONAL PRIVÉ, The Treatment of Foreign Law-Note for the GEDIP meeting 2012 at The Hague, 2012, <https://gedip-egpil.eu/fr/2012/la-haye-2012> Accessed on 10.09.2025.

rules adhering to the relative procedure. These questions reflect that the procedural status of the conflict rule, within this context, defines the principles of the law of the Union and proceeds to the identification of the principles, relevant with the principle of primacy, loyal cooperation and non-discrimination.

The European origin of the conflict rules, that affects the nature and scope of the relative duties, are referred to the judge of its application. The procedural status of the European conflict rule as a superior conception evaluates the opportunity of possible systems of integration and evolution of the law of the Union.

The structural principle of the European legal system since 1964, through the Costa Enel ruling, has laid the foundations for the Brussels Convention of 1968⁵⁶ and the Rome Convention of 1980, as an application that respects the rules of international private law for acts of secondary law.

The principle of primacy, thus, detects the regulatory intervention for the rules of European origin in position, which respects the national ones as a circumstance, which requires an application by the national judge. The international conventions deal with and provide:

“(...) si finalement l’applicabilité d’office du traité est reconnue (...) selon un raisonnement exactement inverse, par une assimilation totale du régime procédurale du droit conventionnel et du droit interne (...)” (Niboyet-Hoegy,

⁵⁶CJEU, 15 November 1983, Ferdinand M.J.J. Duijnste v. Lodewijk Goderbauer, C-288/82, ECLI:EU:C:1983:326, I-03663, par. 14: “(...) the Convention, which is intended to determine the jurisdiction of the courts of the Contracting States in intra-Community civil matters, must prevail over internal rules (...)”.

1996; Bariatti, Pataut, 2011; Liakopoulos, 2022).

The reconstruction of the procedural status for the conflict rules uniform with the principle of primacy highlights the norms of the law of the Union, which are configurable and subject to each European norm, according to its own procedural regime.

The procedural status of the norms of the law of the Union, within the national legal system and the uniform conflict rules, consider that the principle of primacy proceeds and verifies the question, according to other general principles of a structural nature, such as the prohibition of non-discrimination for the loyal cooperation between the Member States as well as the parameter of a future uniform rule for the margins of application for the national norms, as limits of procedural autonomy (Solenik, 2016).⁵⁷

Uniform conflicts and limits to procedural autonomy

Recognizing a principle to the Union does not mean that it is without limits. The CJEU, as an application by national judges for the rules of Union law, regulates the principle of procedural autonomy:

“(...) in absence of harmonization measures the rights attributed by the Community rules must be exercised (...) according to the modalities established by the internal rules (...)”.⁵⁸

⁵⁷Solenik affirms that: “(...) question du statut procédural des règles de conflit communautaires se situe, dès lors, à la frontière entre l’ordre juridique communautaire et les ordres juridiques nationaux (...)”.

⁵⁸CJEU, 16 December 1976, Rewe-Zentralfinanz eG and Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland, C-33/76, ECLI:EU:C:1976:188, I-00235,

It is taken into consideration that the rights and obligations of Union law produce their effects for the legal systems of the Member States as a widespread competence, which recognizes to national judges the differences for the legal traditions of the Member States, as a uniform risk of an application of Union law.

These are profiles that assume a relevance, that is considered by the Union, as a new genre that is distinguished by the relative recognition attributed to individuals and as a necessity, that guarantees the protection of subjective legal situations, which are created by the law of the Union. In other words, this is as procedural autonomy, that imposes on the legislation of the Member States the respect of the principles and the duty of loyal cooperation, as well as effectiveness and equivalence. Thus, the precise principles for the CJEU describe the:

“(…) procedural modalities intended to guarantee the protection of the rights granted to individuals by virtue of Union law and its direct effect⁵⁹ must not be less favourable than those concerning similar appeals under domestic law (...) make practically impossible or excessively difficult the exercise of the rights conferred by the legal order of the Union (...)”.⁶⁰

The impact of the principles of equivalence and effectiveness for

par. 5. 16 December 1976, *Comet BV v. Produktschap voor Siergewasse*, C-45/78, ECLI:EU:C:1976:191, I-02435, par. 15.

⁵⁹CJEU, 13 July 2006, *Manfredi v. Lloyd Adriatico Assicurazioni SpA*, and others, joined cases C-295/04 and C-298/04, ECLI:EU:C:2006:461, I-06619, par. 62.

⁶⁰CJEU, 15 October 2015, *Nike European Operations Netherlands BV v. Sportland Oy*, C-310/14, ECLI:EU:C:2015:690, published in the electronic Reports of the cases, par. 28. 8 June 2017, *Vinyls Italia SpA v. Mediterranea di Navigazione SpA*, C-54/16, ECLI:EU:C:2017:43, published in the electronic Reports of the cases, par. 26; 26 September 2018, *X, Y v. Staatssecretaris van Veiligheid en Justitie*, C-180/17, ECLI:EU:C:2018:775, published in the electronic Reports of the cases, par. 35.

the limits, that are finalized within the scope of application of the national procedural provisions, arrive at divergences of a uniform definition to a procedural treatment for the conflict rules in the European context. This issue addresses the jurisprudence of the CJEU in areas that are different from private international law, thus intervening in questions for the powers of the judge *ex officio* and not only.

Uniform conflicts, procedural status of the norm and role of the CJEU

A first starting point, as an attempt to define the procedural status of the uniform conflict rule, is offered by the CJEU through the *Van Schijndel* case.⁶¹

The related question of referral had to do with the conformity of the Union in national procedural provisions. This is an effect of the powers exercised by the judge in accordance with European law rules, that are inferred by the parties. A preliminary ruling, in the *Dutch Hoge Raad* case, has highlighted, through the CJEU and within the scope of proceedings, the:

“(...) civil rights and obligations which the parties freely dispose of (...) the national judge is nevertheless required to apply *ex officio* the Community rules, if national law allows such application and even when the parties who have an interest in their application have not invoked them (...) the duty of the national judge to raise *ex officio* legal grounds is based on binding

⁶¹CJEU, 14 December 1995, *Jeroen van Schijndel and Johannes Nicolaas Cornelis van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten*, C-430/93 and C-431/93, ECLI:EU:C:1995:441, I-04705. *Peterbroeck, Van Campenhout & Cie SCS v. Belgian State*, C-312/93, ECLI:EU:C:1995:437, I-04599.

Community rules ignored by the parties (...) by virtue of national law, in reference to similarly binding rules of domestic law (principle of equivalence) (...)."

The subject of the obligations according to the judge, who respects the conflict rules in close interconnection with foreign law, has highlighted a duty of application *ex officio* of the uniform private international law, which invokes the measure and the obligation in reference to the national law (Fallon, 1995; Trautmann, 2011).

The equivalence relationship manifests the role of the prohibition of non-discrimination, as a definition of the procedural status of the norm of foreign law and the norm of conflict (Fallon, 1995; Wilke, 2020).⁶² Thus, within the scope of the exercise for the rights and norms of the Union, international disputes are also involved, which impose conditions exposed to risks of a transition and operation within the law of the Union.

The CJEU states, in this regard, that:

"(...) in the power [and not the obligation] to apply *ex officio* the binding rule of law (...) the national judge is required to guarantee the judicial protection afforded to individuals by virtue of the provisions of Community law having direct effect (...) the principle of effectiveness which on the one hand limits the discretion in the application of the provisions of national law and on the

⁶²Fallon affirms that: "(...) règle communautaire ne pourrait à tout le moins recevoir de condition procédurale moins favorable que celle dont bénéficie toute règle nationale correspondante (...) au sujet de l'application d'office du droit étranger, le principe de non- discrimination pourrait avoir pour corollaire d'aligner le régime de la charge de la preuve du droit étranger (...) sur le régime applicable à la preuve du contenu du droit national: l'adage *jura novit curia* conduirait alors à une assimilation pure et simple du droit étranger (...)". Wilke affirms that: "(...) a distinction between foreign law determined by domestic private international law and foreign law determined by EU private international law would be incompatible with EU law, to the extent that the former is ascertained *ex officio* and the latter is not (...) treatment of EU law and violate the principle of equivalence (...)".

other guarantees to Union law more favourable treatment than similar national legal provisions (...)" (Fallon, 1995).

The norm of private international law of the Union is applicable ex officio when the national law authorizes and does not impose on the national judge the ex officio application of the norm of private international law. The CJEU worked with respect for the duties of the judge, who arises ex officio norms of the law of the Union by virtue of the principle of effectiveness. The national procedural rule makes the relative application of Union law impossible and excessive and thus:

"(...) takes into account the role of that rule in the proceedings as a whole, their development and their particularities, before the various national courts (...) considers, if necessary, the principles which are the basis of the national judicial system (...) principle of legal certainty and of the proper conduct of the proceedings (...)⁶³ limited by the obligation for the same to stick to the subject matter of the dispute and to base its decision on the facts, which have been presented to it (...) the initiative of a trial is up to the parties, and the judge may act of his own motion only in exceptional cases where the public interest requires his impetus (...) does not require national judges to raise of their own motion a plea based on the infringement of Community provisions, where the examination of that plea obliges them to renounce the dispositive principle (...) exceeding the limits of the dispute as it has been circumscribed by the parties basing it on facts and circumstances other than those which the procedural party who has an interest in the application of the said provisions has based its application (...) on the obligation to evaluate ex officio the compatibility between domestic law and European law (...) making the application of Community law impossible or excessively difficult (...)"

According to the CJEU, public interests in exceptional cases cause the judge to have a real ex officio obligation under the rules of Union law. It is suitable to establish the procedural status, as a case involving rights, which are not freely available

⁶³CJEU, 14 December 1995, Jeroen van Schijndel and Johannes Nicolaas Cornelis van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten, C-430/93 and C-431/93, op. cit., par. 19.

to the parties (Fallon, 1995).⁶⁴

The CJEU applies the rules of the European conflict, as can be seen in the case of Directive 93/13/EEC relating to unfair terms in contracts concluded with consumers,⁶⁵ thus avoiding for the consumer the risk and difficulty of failure to exercise their rights, which is based on an inferior situation, which finds respect to their professional as a power, that is exercised through negotiations and the degree of information.

The CJEU in order to break the balance and ensure the effectiveness of the protection of European standards requires the national judge to assess *ex officio* the abusive nature of a

⁶⁴Fallon affirms that: “(...) arrêt suggère que lorsque la demande concerne “l’interêt public”, expression européenne qui revient à englober un ordre public de direction comme de protection, l’examen d’office est requis, et il apparaît comme une exception, ce qui revient par le fait même à poser pour principe d’examen d’office de la règle européenne applicable (...)”.

⁶⁵Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts in OJ No. L 095 of 21 April 1993, pp. 29-34. The legislation was later amended by Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 in OJ No. L 328 of 18 December 2019, pp. 7-28.

contractual term.⁶⁶ According to the Faber case,⁶⁷ related to the Directive 1999/44/EC,⁶⁸ the Court highlighted procedural rules and prevented the judge from making a qualification of the sales contract for the consumer, which produces the inertia of the interested party by stating that:

66CJEU, 21 November 2002, Cofidis SA v. Jean-Louis Fredout, C-473/00, ECLI:EU:C:2002:705: par. 35: “(...) object of the enforcement of abusive clauses, promoted by professionals against consumers, the fixing of a time limit to the power of the judge to disregard, ex officio or following an exception raised by the consumer, such clauses may compromise the effectiveness of the protection intended by Articles 6 and 7 of the Directive. In fact, to deprive consumers of the benefit of such protection, professionals need only wait for the expiry of the deadline set by the national legislator to request the enforcement of the abusive clauses that they would continue to use in contracts (...)”. 26 October 2006, Elisa María Mostaza Claro v. Centro Móvil Milenium SL, C-168/05, ECLI:EU:C:2006:675, I-10421 “(...) Directive 93/13 on unfair terms in consumer contracts must be interpreted as meaning that it requires a national court called upon to rule on the challenge of an arbitration award to find the arbitration agreement to be null and void (...) even if the consumer has not raised such nullity in the arbitration proceedings but only in the proceedings for the challenge of the award (...)”. 4 June 2009, Pannon GSM Zrt. v. Erzsébet Sustikné Györfi, C-243/08, ECLI:EU:C:2009:350, I-04713, par. 35: “(...) The national judge must examine ex officio the unfair nature of a contractual term from the moment he has available to him the legal and factual elements necessary for that purpose (...)”. 6 October 2009, Asturcom Telecomunicaciones SL v. Cristina Rodríguez Nogueira, C-40/08, ECLI:EU:C:2009:615, I-07579, par. 59: “(...) Directive 93/13 must be interpreted as meaning that a national court hearing an application for enforcement of an arbitration award which has acquired the force of res judicata, issued in the absence of the consumer, is required (...) to assess of its own motion the unfairness of an arbitration clause contained in a contract concluded between a seller or supplier and a consumer (...) it can carry out that assessment in similar domestic actions. In that case, it is for that court to draw all the consequences arising from that under national law so that the consumer in question is not bound by that clause (...)”. 4 October 2007, Max Rampion and Marie-Jeanne Godard Rampion v. Franfinance SA and K par K SAS., C-429/05, EU:C:2007:575, I-08017, par. 69. 21 April 2016 Ernst Georg Radlinger and Helena Radlingerová v. Finway a.s., C-377/14, ECLI:EU:C:2016:283, published in the electronic Reports of the cases, par. 62ss.

67CJEU, 4 June 2015, Froukje Faber v. Autobedrijf Hazet Ochten BV, C-497/13, ECLI:EU:C:2015:357, published in the electronic Reports of the cases.

68Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, in OJ L 171, 7 July 1999, pp. 12-16.

“(…) the obligation to proceed by itself, under penalty of losing the rights, which the Union legislator intended to confer upon it with Directive 1999/44, to legally qualify in a complete way (...). The consumer is not able to fulfil an obligation of such intensity (...)”.⁶⁹

These are dynamics, that have to do with the functioning and the relationship of limits of a procedural autonomy, arising at a minimum level, that guarantees the principle of effectiveness (Fallon, 1995)⁷⁰:

“(…) from the moment in which it has the elements of law and fact necessary for this purpose, it can dispose of them upon a simple request for clarification (...) even if the latter has not claimed the quality (...)”.⁷¹

The high level of uniform conflict rules, as reflected in the ex officio application of foreign law, allows the obligation of ex officio application for the norm of private international law. It is a material discipline, that is part of the reference of an imperative character (Trautmann, 2011; Solenik 2016; Nishitani, 2017; Françoise, 2022).⁷² This is how generic ideas are

⁶⁹CJEU, 4 June 2015, Froukje Faber v. Autobedrijf Hazet Ochten BV, C-497/13, op. cit., par. 44.

⁷⁰Fallon affirms that: “(...) une place résiduelle où, assurant une fonction de filet de sécurité, il tend à garantir une protection minimale du justiciable (...)”.

⁷¹CJEU, 4 June 2015, Froukje Faber v. Autobedrijf Hazet Ochten BV, C-497/13, op. cit., par. 48.

⁷²Trautmann affirms that: “(...) im Bereich des kollisionsrechtlichen Verbraucher- und Arbeitnehmerschutzes ohnehin einzig das Modell der Amtsanwendung mit den Anforderungen des Unionsrechts vereinbar ist; mit Einschränkungen gilt dies auch für bestimmte Konstellationen im internationalen Unterhalts-, Wettbewerbsrecht sowie möglicherweise künftig im Pflichtteilsrecht (...)”. Nishitani affirms that: “(...) the primacy of EU law over Member State national law, it may be justifiable to order the mandatory application of EU conflicts rules. The argument is that legal relationships governed by substantive mandatory rules (e.g., consumer and employee protection, anti-trust or maintenance obligations) should be regulated by the mandatory application of conflicts rules (...)”. Françoise affirms that: “(...) certaines règles de conflit à vocation matérielle et visant la protection de certaines catégories de personnes-tels que les consommateurs-ou visant un objectif essentiel à l’Union-tel que le droit de la concurrence – pourraient être imposés au juge (...)”.

interpreted (Requejo Isidro, 2019),⁷³ that are referred to, through the jurisprudence of the CJEU, in matters of private international law. It is noted, through the conclusions of the Advocate General in Schlecker case⁷⁴ that:

“(...) the parties have expressed a choice regarding the law applicable to the employment contract, it will be up to the judge to ensure that such law does not deprive the employee of the legal protection that the mandatory provisions of the law closest to the employment contract would guarantee him (...)”.

Also in Verein für Konsumenteninformation case⁷⁵ the necessity and the need for the national judge to take into account the imperative nature was established:

“(...) by Art. 6.2 of the Rome I Regulation on contracts concluded by the consumer (...)”.⁷⁶

And the question now is: What have we learned from the jurisprudence just reported? We can say, that the principle of equivalence and the principle of effectiveness of a European conflict rule will be applied ex officio to the extent of the judge and national law.

In a level of minimum protection it is guaranteed the principle of effectiveness, as well as the burden of applying ex officio the

⁷³Requejo Isidro affirms that: “(...) the private international law rule, or the designated foreign law, is to be applied (...)”.

⁷⁴Anton Schlecker contro Melitta Josefa Boedeker, C-64/12, Conclusions of the Advocate General Nils Wahl presented 16 April 2013, ECLI:EU:C:2013:241.

⁷⁵CJEU, 28 July 2016, Verein für Konsumenteninformation, op. cit.

⁷⁶CJEU, 28 July 2016, Verein für Konsumenteninformation, op. cit., par. 70: “(...) By way of derogation from paragraph 1, the parties may choose the law applicable to a contract which satisfies the requirements of paragraph 1 in accordance with Article 3. However, such a choice shall not have the effect of depriving the consumer of the protection afforded to him by provisions which cannot be derogated from by agreement under the law which, in the absence of choice, would have been applicable under paragraph 1 (...)”.

conflict rule, existing as a material discipline of a mandatory nature. This is an approach suitable for satisfying the need for a common rule, which defines the status of foreign law.

The needs of predictability, uniformity and certainty as well as the solutions, which come from a system of private international norms of the Union have to do with the necessary need for the legislator to intervene in the matter of a uniform rule (Wilke, 2020; Françoise, 2020).⁷⁷

The principle of equivalence is not extended to an assessment of foreign law, which recalls a conflict to all Member States of the Union (Wilke, 2020).⁷⁸ This basis makes the harmonization of the legislator of the Union necessary. Also this consideration is at the basis of the differences arising at a systematic level and concerning the procedural models of the individual national legislations (Solenik, 2007-2008).⁷⁹

National law, thus, imposes a prohibition on the judge, who introduces and ascertains foreign law, especially in common law systems, and the principle of equivalence, which he cannot

⁷⁷Eilke affirms that: “(...) no uniform solution exists under the premise that the matter is left to the member states (...)”.

⁷⁸Wilke affirms that: “[a]s most member states consider domestic private international law as mandatory, the practical outcome is that most have to apply EU private international law mandatorily”.

⁷⁹Solenik sustains that: “(...) problème de la mise en oeuvre des règles de conflit communaitares, cette solution semble exiger que leur statut procédural soit aligné sur celui dont bénéficient les regles nationales (...) cette solution ne peut que rendre un mauvais service à l’objectif d’uniformisation du droit des conflits de lois communautaires (...)”.

invoke (Fallon, 1995; Trautmann, 2011).⁸⁰

In the Van Schijndel case the relative procedural autonomy concerning the Member States works, according to the principles of equivalence and effectiveness, which expand the guarantee that is granted by the law of the Union to various elements, referable to the procedure as a whole⁸¹ as well as by the recognition by the CJEU of a basis of the national jurisdictional system. The principle of procedural autonomy does not prevent the judgment of a foreign law from highlighting by the judge the rule of a uniform conflict, which is prior to the conduct of the parties and the dispositive principle.

The system of private international law risks from behaviors of opportunity for national judges, who influence the conduct of a proceeding by burdening the parties with the introduction and proof of a foreign law, which favors the *lex fori*. The imperativeness, as a higher level of a conflict rule respects the character of a material discipline. However, it does not seem to be such a convincing position.

⁸⁰Trautmann affirms that: “(...) keine Verpflichtung zur Anwendung des Unionsrechts ex officio besteht, soweit das nationale Recht die Amtsanwendung der fraglichen Vorschriften ausschliesst oder gar untersagt (...)”, Fallon refers that: “(...) nulle obligation d'appliquer d'office le droit étranger ni d'en établir la preuve sans le concours des parties lorsque pareille obligation n'existe pas à l'égard du droit du for (...)”.

⁸¹CJEU, 14 December 1995, Jeroen van Schijndel and Johannes Nicolaas Cornelis van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten, C-430/93 and C-431/93, op. cit., par. 19.

The officious obligations for the national judge, who has in his hands elements of law and fact, seem like a margin of influence. The distinction works on the basis of the nature of rights involved. It is a functional solution for needs of uniformity, as we have noted in French law, as well as certainty, predictability, which invokes in a limited way its scope (Françoise, 2022).⁸²

The extension of hypotheses, finalizing the protection of consumers and workers, involves rules on competition and obligations of a food nature, as a regime of provisions for indefinite scopes. In this way, the elaboration of a uniform rule to the procedural treatment seems like a conflict rule.

The identification of the relevant values, different from the new national context of a uniform conflict rule, is destined to a work of a textual nature as well as to characteristics of normative instruments and to a total system of membership (Fallon, 1995).⁸³

Uniform conflict rules and their prescription

The conflict rules, provided for by national legislation, establish the normative character of private international law (Bariatti,

⁸²Françoise affirms that: “(...) générerait un encadrement différencié selon le contenu de la règle de conflit au sein même des textes réglementaires. La solution ne paraît pas souhaitable, car elle risquerait de complexifier le travail du juge sans pouvoir atteindre une uniformité de résultat (...)”.

⁸³Fallon sustains that: “(...) critères généraux de contexte, objectif et structure propres à chaque acte européen, pourraient jouer ici rôle qu’ils remplissent plus généralement comme principes d’interprétation du droit dérivé (...)”.

Pataut, 2011).⁸⁴ The conflict rule, as a European source, differs from any other rule of an internal legal system, which is applied ex officio by the judge, because if it were not so it would end its effectiveness.

The European regulations and the rules of private international law, as in example from the regulation on contractual obligations, implicitly imply the will for the European legislator for the conflict rules that:

“(...) systematically with a language that signals their undoubtedly preceptive function have an imperative value (...)” (Császár, 2014; Wilke, 2020).

Art. 4 of the Rome I Regulation is related to the applicable law.

In the absence of a choice, that provides for the type of contract, it becomes a discipline of a law referring to the connecting factor. The provisions, that have as their object the mechanisms of operation, formulate the Regulation, according to Art. 22, par. 1. These are determining objectives for the applicable law and in each territory are connected with Art. 34 of the Regulation (EU) 650/2012 (on the subject of referral).

This referral regulation prescribes the application of a law for the third state. This is how the conflict rules pose to the legislator and demand the designation for the law that recalls

⁸⁴Bariatti, Pataut affirmed that: “(...) la question de l’applicabilité d’office de la règle de conflit de lois semble se poser exactement de la même manière que celle-ci soit de source nationale ou de source européenne (...) semble au premier abord que la question de l’applicabilité d’office de la règle de conflit puisse se résoudre exactement de la même façon, quelle qu’en soit la source” and this when it has to do with “d’une règle qui est, dans sa structure (...)”.

and excludes its own optional possibility.⁸⁵

Conflict of rules and useful effect

The conflict of rules show the normative character, which is connected with the European regulations as well as contributes and guarantees the correct functioning of a national market, according to the protection of the useful effect of a discipline from the European regulations.⁸⁶ It is a manifestation of an interpretative criterion, which is part of the principle of effectiveness, sharing the foundation of the duty of loyal cooperation.

In this spirit, the CJEU in *Germany v. Commission* case⁸⁷ refers to the effectiveness, practicality and reasonable application useful of real scope. Thus, the principle of useful effect has had a fundamental role, which guarantees the development and integrity of a definition, which the community and the Union as

⁸⁵See Art. 26 of the Regulation Rome I.

⁸⁶CJEU, 21 April 2016 *Ernst Georg Radlinger and Helena Radlingerová v. Finway a.s.*, C-377/14, op. cit., par. 32, 68-70: “(...) the court seised therefore has the task of ensuring the effectiveness of the protection sought by the provisions of the Directive (...) the role thus attributed to the national court by Community law in the area in question is not limited to the simple power to rule on the possible unfair nature of a contractual term, but also entails the obligation to examine that question of its own motion (...) the examination of the national court's own motion of compliance with the provisions deriving from Directive 2008/48 constitutes, moreover, an instrument suitable for achieving the result envisaged by Article 10(2) of that directive and for contributing to the achievement of the objectives set out in recitals 31 and 43 (...) the national court is therefore called upon to ensure the effectiveness of the consumer protection sought by the provisions of Directive 2008/48 (...) but also entails the obligation to examine that question of its own motion (...)”.

⁸⁷CJEU, 15 July 1963, 34/62, *Germany v. Commission*, ECLI:EU:C:1963:18, I-00269.

a legal system of new kind structure takes into account the useful effect to a double exception.

The useful effect presents itself as an exegetic criterion, which interprets the national rules and the Community law in a functional way towards the pursuit of objectives of European integration. This principle acts as a constraint for internal legislators to an exercise of exclusive and concurrent competences. Such an application, within the scope of the private international law of the Union, has a central significance for the definition of the procedural status of the rules of national conflict.

In this way, the full implementation of the objectives of a system of private international law of the Union is also guaranteed, which favors the outcome of legal disputes, the certainty of the applicable law and the predictability of solutions, as a uniform application in the rules of conflict, that is independent of the imperative character of the material law it refers to (Jänterä-Jareborg, 1993).⁸⁸

The effectiveness of this criterion protects and refers to objectives for the realization of an area of freedom, security and justice, which allows in a unitary way the European regulation in the field of private international law, which defines an

⁸⁸Jänterä-Jareborg affirms that: “(...) intended uniformity of result through unified choice of law rules can only be achieved if the courts and other competent authorities of the Member States are under an obligation to ex officio apply these rules and the law they refer to (...)”.

autonomous system distinct from the national ones. It is what produces the conference of the Hague as limit to the unification of the norms in conflict.

The objectives risk and prejudice different national models, as the foundation of the principle of loyal cooperation and of the useful effect, that overcomes the burden of the national judge, who applies the rules of national conflict. It is necessary to understand the measure and the norm, that harmonizes and admits the sort, that preserves the useful effect in the norm of private international law (Liakopoulos, 2020b).

Judge's duty to apply the norm of private international law as well as the foreign law it calls, presents a codification from the general part of private international law, according to the Lagarde report, which states:

“(…) matière patrimoniale] les parties peuvent d’un commun accord renoncer à l’application du droit étranger au profit du droit (…)” (Requejo Isidro, 2019)⁸⁹.

Procedural rules of the same nature have an identity function (Kramer, 2012). These are rules, that systematically impose the ex officio application of conflict rules and the principle of iura novit curia, of national legal systems.

The problem of divergences reserves the national conflict rules, as a European source of a model of legal systems, which optionally adopts the conflict rules, emphasizing and

⁸⁹Requejo Isidro affirms that: “(…) EU legislative effort to regulate the application of Private International Law and of foreign law will probably hampered by political hurdles, which can only be expected to worsen in the near future (…)”.

representing an obstacle to the implementation of a rule of a uniform nature (Nishitani, 2017).⁹⁰

The solutions of a general nature are of officious application as is assumed by European regulations as well as. They are also universal and refer to the laws of third states for the ascertainment of their difficult survey (Beaumont, 2019).

The London Convention shows the need for a correct functioning of the conflict rules and the effective application of the foreign law referred to. These are considerations that legitimise a solution, that reaches a balance that preserves the useful effect of the rules in private international law, as well as the values of a definition of a procedure for the good administration of justice. The national judge, also, takes into account the costs, that apply ex officio the rules of private international law to a foreign law (Leible, 2016).

National legal systems including the Swiss one refers to the character of a dispute. This character represents the imperativeness of a conflict rule, which does not satisfy the needs, certainty and predictability of the applicable law. It is adopted by the French model, as a reference of an available

⁹⁰Nishitani affirms that: “(...) fundamental revision of substantive and procedural rules in the Member States that entirely or partly presuppose the facultative application of conflicts rules or foreign law, such as the U.K., Ireland and Malta, as well as France, Finland and Sweden (...) solution would be best suitable to achieve international harmony of decisions which is the objective of uniform conflicts rules, it certainly requires a careful analysis of feasibility and practicality throughout various Member States (...)”.

nature of rights (Nord, 2022).⁹¹ It is also vague, susceptible and depends on individual circumstances of a specific case.

The compatibility of such a case includes a procedural agreement in favor of the *lex fori* to a European system of private international law, which is totally foreign. The mechanism at the entrance of the referral of the Regulation (EU) n. 4/2009 in Art. 7 states that:

“(…) le créancier et le débiteur d’aliments peuvent, uniquement pour les besoins d’une procédure particulière se déroulant dans un état donné, désigner expressément la loi de cet état pour régir une obligation alimentaire (...)”.

The economic efficiency that is established through Art. 120 TFEU (Kellerbauer, Klamert, Tomkin, 2024) describes the autonomy of the parties and the possibility of selecting the law of the forum that gives value to their respective interests (Romano, 2022).

The optional conception of conflict rules and especially of the procedural agreement does not deny a certain degree of

⁹¹Nord affirms that: “(...) qualification des droits en cause se fait *lege fori*. Si les droits sont disponibles, selon le droit français, le juge n’est pas tenu d’appliquer d’office la règle de conflit (...) il en va ainsi lorsque la règle de conflit est appliquée d’office, car les droits sont indisponibles selon la conception française, alors pourtant que la loi étrangère qualifie les mêmes droits de disponibles. L’intervention du juge peut paraître rétrospectivement inopportune. À l’inverse, de façon plus déterminante, si les droits sont qualifiés de disponibles en vertu du droit français, alors qu’ils sont indisponibles selon le droit étranger normalement applicable (...) combinée au silence des parties, mène au même résultat que dans l’arrêt Bisbal. Les parties peuvent aller à l’encontre du droit étranger et échapper à l’impérativité de ses normes (...) il convient dès lors de qualifier les droits en présence en fonction du droit étranger désigné par la règle de conflit. Une telle solution est susceptible d’être réfutée car trop complexe. Un risqué de cercle vicieux a même été mis en évidence. Consulter la loi étrangère pour savoir si la règle de conflit doit ou non être appliquée et donc si cette même loi étrangère a vocation à jouer peut en effet paraître illogique (...)”.

connection. The applicable law depends on an explicit and implicit manifestation of will, that has been expressed between the parties. This is an element, that includes two broad phenomena.

The legislator recognizes the autonomy of private international nature, as a configuration of the conflict rule, which allows to modulate an imperative character that leads the foreign law but not always the relevant law of the forum. The optional conception of conflict rules and the international private autonomy have a common denominator of the ratio, which justifies and represents the realization of the interests of the parties.

The optionality of conflict rules is manifested in the possibility of concluding a procedural agreement, that shares the international private autonomy in favor of the *lex fori*. The same outcome is expressed in the non-application of a foreign law (De Boer, 1996).⁹² The international private autonomous nature is not unlimited. The European legislator has thus enhanced the *optio iuris* in favor of the law of the forum confined to the matter of extra-contractual obligations.

⁹²De Boer affirms that: “(...) the parties explicitly choose forum law or jointly plead the non-application of foreign law, the result is the same in both cases. The idea of freedom of disposition is carried one step further when an implicit choice is accepted (...) by refraining from raising the choice-of-law issue, intended to have their dispute adjudicated under forum law, facultative choice of law is nothing but a variation on the theme of party autonomy, with which it shares a theoretical basis (...)”.

In this regard, the Rome II Regulation provides for, through art. 8, par. 3, the violation of industrial property rights. Art. 6, par. 4 the unlawful acts, deriving from unfair competition and from acts of competition, that limit any recognition relating to the interests of the parties excluded from the choice of law.

Therefore, the exercise of *electio iuris* is applicable. The *lex fori* is limited to the Regulation (EU) n. 650/2012, which highlights the need for certainty of the law applicable to the succession. The agreement, following the death of the *de cuius* and the *professio iuris*, is operated.

Other limits of international private autonomy derive from the need to guarantee the trust of third parties (Laval, 2016).⁹³ The parties make the cases of the forum applicable to a foreign place, which knows no obstacles and are exercised retroactively. These considerations designate a procedural agreement with implicit and explicit mode to the forum to all cases.

The boundaries outlined by the same regulations allow the parties to work on an *electio iuris* with retroactive mode (Solenik, 2016; Von Hein, Kieninger, Rühl, 2019).⁹⁴

⁹³Laval affirms also: “(...) rules are altered to take into account third parties’ expectations. The contract is no longer considered as the parties’ prerogative but as a social fact likely to extend its effects to third parties (...) the choice-of-law rules for contracts seem paradoxically designed to satisfy only parties’ interests. Choosing law by agreement provides certainty and predictability only to the parties to the transaction. Third parties are unaware of the choice of law made by the parties. Their expectations call for an objectively determined law (...)”.

⁹⁴Von Hein, Kieninger, Rühl affirmed that: “(...) falling within the scope of the European conflict-of – law regulations, where parties can request the *lex fori* through means of a retroactive choice of law (...) the parties should also have at their disposal

This is a contractual matter, existing for the conflict rules dedicated to the protection of the weak contracting party. Such rules have a mandatory character and do not represent obstacles. The parallelism regulating the coordination between the connecting criteria of Art. 6, par. 1 of the Regulation Rome I and the jurisdiction titles from the regulation Brussels I-bis, actually seem superfluous to the interested parties to select a procedural agreement for the relevant law of the forum. This highlights the limits of Art. 8, par. 3 and 6, par. 4 of the Regulation Rome II in the matter of non-contractual liability as well as of Art. 5 of the Regulation n. 1259/2010 relating to maintenance obligations.

The imperativeness of the uniform conflict rule and the admission of procedural agreements in favor of the *lex fori* finds space in the rule, which harmonizes and integrates the procedural treatment of foreign law (Françoise, 2022), thus affirming the acceptability of a facultative choice of law, that largely depends on the freedom of choice of the parties of a multistate legal relationship (De Boer, 1996).

the option to waive, expressly or implicitly, without formal requirements, the application of foreign law in favour of the *lex fori* (...) express or implied choice of the *lex fori* (...) has the same effect as a decline to plead foreign law (...) far as facultative choice of law and party autonomy have the same theoretical basis-freedom of disposition sanctioned by the forum's conflicts law-they are subject to the same limitations (...). Solenik sustains also that: "(...) party (...) is not boundless. Party autonomy is restricted in some areas to begin with, and in others for certain categories of cases (...) application of EU private international law dependent upon a party pleading it, or to allow the parties to choose the *lex fori* in every case, would subvert these limitations (...)"

A possible solution proposes and reconciles in an easy way the current form of procedural agreement as provided for by the private international law of the Union. In this regard, Art. 7 of the Protocol of the Hague on contractual obligations offers the introduction of the autonomy of the parties, i.e. the advantages and terms of simplicity deriving from the application of the law of the forum.

In this sense, Art. 4, par. 3 concerns the maintenance obligations of parents towards children under the age of twenty-one, which are governed by the creditor, who has brought the matter before the competent authority of the state. In this case the debtor has habitual residence, as a consequence of the choice of the law applicable to maintenance obligations and towards his children, who are intended and remain limited.

As a proposed solution is the coherence, that the procedural status of the conflict rule and its content allows to take advantage of the benefits derived from a flexible international private law mechanism, that preserves the useful effect of the national conflict rule (Illmer, 2009; Solenik, 2016). It is confirmed that the fact of the coincidence between forum and *ius* calls the parties to work on the *lex fori*, which seeks to simplify the legal framework, that is referred to and produces advantages for the certainty of the law and the predictability of the solutions, as an objective, that follows the instruments of

uniform private international law, which guarantees the functioning and the conflict rules of laws in force of the Member States in the same law, that the country of the judge has seized (Françoise, 2022).⁹⁵

The renunciation of the foreign *lex causae*, through a procedural agreement in favor of the *lex fori*, fosters the will of the parties that implicitly express elements, which place the case at an international level and the application of the same to a foreign law.

From this perspective, it is believed that the procedural agreement admits and exercises, that all the member states, within the procedural phase, arrive at the appeal showing the precautions, that make necessary and do not overemphasize the optionality of the conflict rules, which derive from and guarantee the third parties.

The need of a European system of private international law, as a solution that takes into account the choice in favor of the law of the forum, it was exercised by the scope of the conflict of rules. It also respects and does not constitute a derogation from what requires the judge to verify *ex officio*, i.e. respect of the limits to the exercise of an international private autonomy.

⁹⁵Françoise affirms that: “(...) d’atteindre une meilleure cohérence dans le traitement des litiges, la réserve procédurale ne peut produire des effets que dans les matières pour lesquelles la règle de conflit de lois prévoit déjà un choix de loi et en l’unique faveur des lois considérées comme éligibles par la règle de conflit (...)”.

Coincidents on a scale of law in favor of the *lex fori* are presented as a procedural agreement, which produces and does not allow such a theoretical divergence (Solenik, 2016) regardless of the minor importance, which recognizes the interests of the parties as well as the conception of a given legal system for the rules on conflict of laws.

The private international law of the Union with a systematic and textual way does not qualify as binding rules the *ex officio* application without reservations. In this way, the rules of the private international law of the Union and foreign law can be resolved in another way.

The Member States, that are part of the rules of private international law, are before the jurisdictions. From this perspective, national divergences do not constitute an obstacle to the realization of a uniform rule. This argument is related to the practical difficulties and the application of conflict of rules that recall foreign laws. The means of the judicial authorities, therefore, make foreign law accessible to other cooperation instruments.

This effort realizes and harmonizes the international private law issues, which risk not being supported by the action, that intervenes in other sectors.

Towards the determination of foreign law

The determination of issues, that have to do with foreign law, are connected and refer to the ex officio application of the uniform conflict rules, the application of the principle *iura aliena novita curia*, achieved in a reasonable way. The law refers to the conflict of rules of the European regulations, that are approved by the parties and contain objectives of certainty and uniformity of solutions, which end in a similar way to the admission of a conflict of rule of an optional nature (Fallon, 1995; Bariatti, Pataut, 2011; Solenik 2016; Von Hein, Kieninger, Rühl, 2019).⁹⁶ The CJEU, through Art. 13 of the Regulation (EU) n. 1346/2000 and Art. 16 of the Regulation (EU) n. 848/2016, disposes and benefits the prejudicial act to the mass of creditors. Such an act is subject to the law of a state other than the state of opening. The law of that Member State does not allow the factuality of an

⁹⁶Fallon affirms that: “(...) lorsque l’obligation d’examen d’office du droit applicable existe, il en va de même de celle, pour le juge, établir le contenu de ce droit (...)”. Bariatti, Pataut refer that: “(...) le refus de participer à l’élaboration de la preuve du contenu de la loi étrangère serait une violation de la règle de conflit de lois de source européenne et donc, indirectement, du droit de l’Union (...)”. Von Hein, Kieninger, Rühl explain that: “(...) seems to make little sense to apply foreign law ex officio at the first stage of a process (...) but to place the burden of proving the content of foreign law on the parties at the second stage, thereby running the risk that the *lex fori* will ultimately be applied on the ground of non- ascertainability of foreign law. So far as foreign law is applicable (mandatorily), it is for the judge to ascertain (...)”: Solenik states that: “(...) condition procédurale du droit étranger étant largement tributaire du statut dont bénéficie la règle de conflit qui le désigne, il semble logique d’appliquer le même raisonnement d’efficacité au processus d’application du droit désignée par une règle communautaire (...) dans l’hypothèse où le juge national, après avoir déterminé d’office la loi applicable, ne procéderait pas à la recherche de sa teneur, ni d’office, ni en sollicitant la collaboration des parties, les objectifs de sécurité juridique, de prévisibilité du droit applicables et de prévisibilité du résultat du litige se trouveraient vidés de leur substance (...)”.

act by any means.

The rule establishes, that the *lex fori concursus*, yields to the law of another Member State and renders as irrevocable the act that is prejudicial to the creditors' rights.

The beneficiary of the act gives proof of his own subjection and to a different law that resorts to means of appeal. This burden, for the CJEU in *Vinyls Italia* case as well as in the *Nike European Operations Netherlands* case, excludes and limits in an abstract and general way the *lex causae* of means of appeal, that hold to demonstrate the concrete presupposition that makes them accepted.⁹⁷ This pronouncement burdens not only the proof of the content but also the rule that detects with a precise manner and applies the species and the applicable law that proceeds to the action of revocation.

This principle, as a general rule, establishes foreign law and limits the scope of an object norm, that interprets and guides this type of work (Requejo Isidro, 2019).

In the *Verein für Konsumenteninformation* case of the CJEU, the presence of a clause of an applicable law was reported, as a task of the referring judge, which identifies foreign law norms within the state of residence of the consumer and of whom it is not possible to derogate them in a conventional manner.

The proof of the foreign law, that can be used as an exception,

⁹⁷CJEU, 15 October 2015, *Nike European Operations Netherlands BV v. Sportland Oy*, C-310/14, op. cit., parr. 35-39. 8 June 2017, *Vinyls Italia SpA, v. Mediterranea di Navigazione SpA*, C-54/16, op. cit., par. 38-39.

seeks to interest the third party beneficiary in the application of the *lex concursus*. The need for an active intervention by the judge, when a dispute arises, holds and verifies the law identified by the benefit, that invokes the private international law of the forum. It, also, corresponds to the normative contents, according to the ratio of art. 13 and 16 for the protection of legitimate trust to the third party.

The application of the principle *iura novit curia* in European private international law is confirmed in arguments, which respect the procedural treatment of a conflicting rule.

Within this perspective, the central role of the principle of loyal cooperation, in a direct manner and as a duty, imposes on Member States to cooperate actively in the realization of a process of European integration. This is a negative duty, which refrains from behaviors, that are contrary to this objective.

The problem of ascertaining foreign law, as a principle under investigation, is relevant, suitable to allow the national judge to know and apply *ex officio* the foreign law as well as to recall uniform rules in conflict, according to the Member States, that sacrifice the imperative needs and national interests, that pursue the objectives of community integration. The application of the law of the forum, thus, represents an obstacle that loses its legitimacy.

It, thus, turns to another principle, that of mutual trust, or

equivalence and mutual recognition for the legislation of national law. It was born within the scope of the national market, thus developing the principle of mutual recognition in an area of freedom, security and justice and as a consequence becoming an axe that remains in one's sleeve (Bonifay, 2017; Liakopoulos, 2019d).⁹⁸

The principle of mutual recognition that was born from the Cassis de Dijon case,⁹⁹ as well as the notion of measure of equivalent effect for the trade of goods,¹⁰⁰ create obstacles to national legislation relating to the trade of products, which respond to the imperative needs that identify the effectiveness of fiscal controls, as protection of public health and fairness for commercial transactions and defense for the consumers.

The lack of imperative nature of the CJEU confirms that a product of a marketed nature of a member state circulates to all member states despite the differences in a technical regulation of the country of origin and the country of destination.

Equivalent national measures as minimum acceptable standards

⁹⁸CJEU, 11 May 1989, Esther Renée Wurmser and others, C-25/88, ECLI:EU:C:1989:187, I-1105.

⁹⁹CJEU, 20 February 1979, Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein, 120/78, op. cit.

¹⁰⁰CJEU, 20 February 1979, Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein, 120/78, op. cit.: “(...) measure having equivalent effect to quantitative restrictions on imports (...) must be understood as meaning that the prohibition laid down in that provision also applies to the fixing of a minimum strength for alcoholic beverages, such fixing being contained in the legislation of a Member State, where the importation of alcoholic beverages lawfully produced and marketed in another Member State is concerned (...)”.

exclude the legislation of the state of origin with the duty of the state of destination to affirm “such competence and correspondingly refrain from claiming to exercise its own” (Solenik 2016).¹⁰¹

The exclusion of obstacles to free movement as well as the principle of mutual recognition in national legislations places, through prior assessment of its content, the law of the state of origin and of the state of destination establishing the measure of legislations, which are considered as equivalent.

The national market and the area of freedom, security and justice are part of judicial cooperation in civil matters.¹⁰² The same applies to the principle of mutual trust, according to which:

“(...) judicial decisions issued in a Member State are recognised in another

¹⁰¹Solenik affirms that: “(...) le principe de reconnaissance mutuelle (...) repose sur l’idée de confiance faite à la loi de l’Etat membre d’origine. L’effet régulateur de cette loi est considéré comme suffisant pour permettre l’accès des produits et des services conformes à ces dispositions au marché d’un autre Etat membre, sans que ce dernier puisse y opposer des exigences équivalentes (...)”.

¹⁰²CJEU, 11 February 2003, Hüseyin Gözütok (C-187/01) and Klaus Brügge (C-385/01), joined cases C-187/01 and C-385/01, ECLI:EU:C:2003:87, I-01345, par. 33: “(...) the principle of mutual trust is also established in relation to criminal legislation and reconstructed with reference to Art. 54 of the Convention implementing the Schengen Agreement (...) when the individual has already been convicted by a final judgment in another Contracting State provided that, in the event of conviction, the sentence has been enforced or is actually being enforced at present or, according to the law of the Contracting State of conviction, can no longer be enforced (Ne bis in idem) (...) preserve the prohibition of Ne bis in idem and assess the existence of the conditions for its application has therefore pushed the Court of Justice to endorse a real “taking into consideration” by the national judge of the criminal law established by another Member State (...)”. 9 March 2006, Leopold Henri Van Esbroeck, C-436/04, ECLI:EU:C:2006:165, I-02333, par. 30. 11 December 2008, Klaus Bourquain, C-297/07, ECLI:EU:C:2008:708, I-09425, par. 37.

Member State¹⁰³ (...) exclusion as a reason for refusing recognition for contrariety to public order (...) is a decision issued in a Member State (...) the violation manifests a legal norm considered essential (...) of a right recognised as fundamental (...)”¹⁰⁴

The principle of mutual trust legitimises a duty and accepts norms and acts of another Member State of the Union (Requejo Isidro, 2019).¹⁰⁵ From this perspective it is shareable (Bonifay, 2017)¹⁰⁶ and excludes a compatibility with the principle of mutual trust as equivalent with the legislation of the Member States. In this case, the legislations are national approaches, that accommodate factual arrangements of foreign law, such as the applicability to a system of private international law of the Union, according to the principle of the *iura novit curia*.

¹⁰³CJEU, 23 October 2014, flyLAL-Lithuanian Airlines, C-302/13, EU:C:2014:2319, published in the electronic Reports of the cases, par. 45.

¹⁰⁴CJEU, 16 July 2015, Diageo Brands BV v. Simiramida-04 EOOD, C-681/13, ECLI:EU:C:2015:471, published in the electronic Reports of the cases.

¹⁰⁵CJEU, 27 October 2016, Child and Family Agency contro J.D., C-428/15, ECLI:EU:C:2016:819, published in the electronic Reports of the cases, par. 57: “(...) in the context of the transfer of jurisdiction to a court better placed to deal with the case (Article 15), when the competent court has to determine whether the transfer of the case to that other court is capable of bringing real and concrete added value, as regards the adoption of a decision concerning the child (...) it should not take into account, for the purposes of such an assessment (...) in the event that the case were transferred to it. Indeed, such a consideration would be contrary to the principles of mutual trust between Member States and mutual recognition of judicial decisions on which Regulation No 2201/2003 is based (...)”.

¹⁰⁶Bonifay affirms that: “(...) la confiance mutuelle, dans le cadre du marché intérieur ne constitue en réalité que la conséquence de l’équivalence préalablement constatée des législations, elle même découlant de l’existence d’un fonds commun aux États membres (...) résident dans l’appartenance pour les États à une même “Communauté” unie par des liens toujours plus solides et soumise à un ordre juridique et une juridiction supranationale commune, permettait en effet de considérer que ces États offraient des “garanties” équivalentes en termes de protection d’intérêts généraux (...)”.

Ascertaining foreign law as a means of influencing international cooperation

The legal and interpretative criteria, which seek to justify the application of the principle of the *iura novit curia* in the context of the private international law of the Union, introduce the means for the judge, who resorts and does not respond to the obligation of the consequences of an impossibility, that reaches up to the content of the foreign law.

The means of ascertaining foreign law represent the main reasons in the basis of an abusive selection for the jurisdiction, competent to regulate the case, i.e. the forum shopping. The ideal solution for the European system of private international law of the Union comes into conflict with proposals for harmonization, thus leading to national methods for standards, as evidence of the established foreign law.¹⁰⁷ It is not easy to build uniform methods for the ascertainment of foreign law, i.e. necessary to existing national models and within the perspective of access to justice, good administration and protection for a fair trial, according to the ECHR. They are values that the private international law of the Union cannot ignore. The solutions towards a quick definition of the fair distribution procedure, between the judge and the acquisition parties, are part of the content in foreign law, according to the principle of the *iura*

¹⁰⁷See the Madrid Principle n. VI affirms that: “(...) content of foreign law should be ascertained in accordance with the Procedural Law of the national authority (...)”.

novit curia (Nishitani, 2017).¹⁰⁸

The existence of the parties admitted in the face of difficulties of the judicial authority slow down the procedure of a link with the foreign legal system, which the law applies in a specific case. The duty of the judge, who ascertains the foreign law, is not translated as a real obligation, therefore, the results are binding. The evidence is privileged to intelligible documents, which the judge resorts to research and evaluate their reliability.

The problem of the judge's appeal is financed by the parties. A rule that harmonizes and admits the use of means of assistance issued by the authorities and public institutions (Acquaviva, 2020).¹⁰⁹

The advantages deriving from means and tools offered by an international cooperation move as solutions that do not involve the identification of a harmonization of the means of ascertaining foreign law. This is a positive value for the cooperation tools, which respect the protection of the fair right to a trial (Nishitani, 2017; Requejo Isidro, 2019).

The cooperation instruments, thus, enable and overcome the limitations arising from the existence of state legal systems with various procedural systems. And it is evident that the advantages

¹⁰⁸Nishitani affirms that: “(...) parties may be interested in assisting the courts with a view to clarifying the foreign rules, accelerating court proceedings (...)”.

¹⁰⁹Acquaviva sustains that: “(...) l’indépendance et l’impartialité devraient être reconnues et garanties, pourrait (...) être officiellement habilité à délivrer des certificats objectifs et neutres relatif à la teneur du droit étranger et à son interprétation en droit positif dans l’État concerné, dans une situation juridique déterminé (...)”.

of a European system of international law are in favor of international cooperation, which offers the parties involved in a cross-border dispute, a guarantee of a uniform legal framework and the protection of the parties' interests, thus facilitating access to justice, that contributes to legal certainty at a transnational level (Liakopoulos, 2019e).

According to Art. 81 TFEU, a criterion of interpretation, that outlines and establishes the principle of the *ex officio* application of uniform conflict rules and the principle of *iura novit curia* in a precise manner ascertain the content of foreign law as an effort for the Union, which addresses the principle of loyal cooperation, that exists in the European judicial network for intra-Community cases.

In this way, detailed information is provided to national judges for the cases in question. This perspective defines the procedures for the forms of cooperation, that are based on direct communication between judicial authorities.

This solution involves the relationship between Member States without denying the value, which represents the protection of fair trial as well as involves the cases characterizing international elements, according to their location in a European judicial space but also outside of it.

The existing instruments have been part of the London Convention of 1968 considering the development of other

institutions such as the Hague Convention, that is, as instruments of a global nature.

The impossibility of acquiring the content of foreign law

Ascertaining foreign law, as an argument of a uniform rule perspective, has as a consequence the impossibility of arriving at the content of foreign law. The choice of private international law systems comes on theoretical foundations of different nature, as a direct application of a law of the forum.

Within a comparative context, the requirements of a system of private international law of the Union have a preliminary nature, that is, an imperative character of the conflict rule to an immediate recourse to the law of the forum, which the national judge finds difficult to acquire for foreign law.

The private international law of the Union, thus applies the law of the forum, which intervenes as a ratio in extremis. The CJEU in *Laboratoires Boiron* case highlighted the difficulties of a test, which confirms, excludes and contributes direct sales. It also determines the distributors, who constitute state aid to the national judge by resorting to every procedural means, that national law provides and orders the investigative measures, including also the production of a deed to a document, which operates to a third party.¹¹⁰

¹¹⁰CJEU, 7 September 2006 *Laboratoires Boiron SA e Union de recouvrement*

Uniform conflict rules refer to the conditions for the invocation of a foreign law, as connecting factors that foresee but do not satisfy, according to Art. 5.1. of the Regulation of Rome I, the applicable law, which according to Art. 10.2. of the Regulation Rome II, does not determine and according to Art. 8 of the Regulation n. 1259/2010 does not replace a criterion, that calls for the lack of law, as an immediate and preceding criterion (Wilke, 2020). From a systematic point of view, direct recourse to the law of the forum does not respond to the rationale of the functioning and to the structure of conflict rules that are uniform.

In the field of family law, the will of the European legislator values the use of criteria and connection to the autonomy of the parties, as well as the flexibility of the invocation of foreign law and the proximity of a legal relationship with a given legal system, which goes beyond the models of an exclusive conception. Subsidiarily, the application of a law of the forum inserts a design with a predetermined manner by the legislator, which thus regulates the coordination between different connecting criteria, which are provided for in the conflict rules with requirements such those of certainty and predictability, thus underlining the European system of private international law. Solutions in the method of appeal to the *lex fori* will not be

des cotisations de sécurité sociale et d'allocations familiales (Urssaf) de Lyon (France), C-526/04, ECLI:EU:C:2006:528, I-07529, par. 57.

adopted (Jänterä-Jareborg, 2003; Wilke, 2020).¹¹¹

These types of approach are considered as alternatives to foreign law, which the national judge thus reconstructs the content of general principles to a system of a *lex causae* from uniform material law rules and/or a law that considers closer to the one referred to.

Such solutions lead to outcomes, that are not predictable and involve excessive burdens, that weigh on the judge significantly the prolongation of the time of the procedure.

The solution in a subsidiary way for the law of the forum and in line with the principle of the useful effect in general as a principle of loyal cooperation, sees the principle of non-discrimination. The reference to foreign laws as connecting criteria put conflict rules to an unjustified prevalence of the law of the forum that also respects other Member States.

Application and interpretation of foreign law

Interpretation and application of foreign law, under a profile of the existing national legal systems, seems problematic. Outside the procedural treatment the principle of application remains faithful and genuine with the national legal systems, which

¹¹¹Jänterä-Jareborg affirms that: “(...) the content of the foreign law cannot be established, the same solutions should be applied. At present, in this situation the courts of almost all of the Member States apply the law of the forum (...)”. Wilke sustains that: “(...) national law immediately makes the *lex fori* apply in such a situation, as is the case in many member states, the outcome would depend on the court seised, contrary to what harmonised conflicts rules are intended to achieve (...)”.

welcome a rule that presents obstacles to the deviations of this rule thus risking the principles of the law of the Union.

The CJEU has also established the principle of faithful application (Fallon, 1995).¹¹² The judges based on the interpretation of the national case law of Art. 1153 of the French Civil Code: “cannot be cumulated with conventional interests”.¹¹³ In the same spirit, in the EUIPO case, in the matter of European trademark it was stated that:

“(…) the requirements posed by the principle of effective judicial protection satisfy (...) the useful effect of Regulation No. 207/2009 (...) that is, the conditions of application and the scope of the legal provisions invoked (...)”.¹¹⁴

Within the area of freedom, security and justice, the principle of effectiveness works as a parameter, which respects the need for a genuine and faithful application of the law that calls for uniform conflict rules.

The European system of private international law does not allow solutions, that are different from a duty of interpretation. The genuine application as a rule that calls for distortions of foreign law leads to different outcomes from the failure to apply rules of private international law, which poses as an obstacle:

“(…) the achievement of the objectives to which these are preordained by weakening the protection of individuals who rely on them (...) the genuine

¹¹²“(…) le droit de l’Union se forge ainsi une manière de “système du for” (...) à l’instar du droit international privé, capable de construire une théorie de la condition du droit applicable relevant d’un ordre distinct de celui du for (...)”.

¹¹³CJEU, 10 June 1999, OP v. SIVU, C-172/97, ECLI:EU:C:1999:288, I-06699, par. 17 and 29.

¹¹⁴CJEU, 5 April 2017, EUIPO v. Gilbert Szajner, C-598/14 P, ECLI:EU:C:2017:265, published in the electronic Reports of the cases, par. 38ss.

application of foreign law must be assessed whether a possible harmonized rule (...) must take into account further elements that impact, broadening or narrowing it (...)."

The legal institutions, unknown to the law of the Member State, are equivalent to the objectives and interests pursued in the real law and to the effects prescribed by the regulations on succession, matrimonial property regimes and the economic consequences between registered partnerships. Other factors directly concern the law of the Union and the role that the judges of the Member States assume for the foreign law.

The impact of the principle, as elaborated by the CJEU and on the compliant interpretation, configures an examination of the compatibility of each national law with the law of the Union, which is in contrast with the measure excluded by way of interpretation.

The extension of this principle, within the scope of application of the foreign law, requires the national judge to accept the interpretation as:

"(...) suitable to make it compatible with the Community law (...) derived"¹¹⁵

¹¹⁵CJEU, 13 November 1990, *Marleasing SA v. La Comercial Internacional de Alimentación SA*, C-106/89, ECLI:EU:C:1990:395, I-04135, par. 8: "(...) in the judgment of 10 April 1984, *Von Colson and Kamann*, paragraph 26 of the grounds (Case 14/83, ECR p. 1891), the obligation of the Member States, arising from a directive, to achieve the result envisaged by it, as well as the obligation imposed on them by Article 5 of the Treaty, to take all general measures (...) apply to all the bodies of the Member States, including, within their sphere of competence, the judicial bodies (...) national law, regardless of whether it concerns provisions preceding or subsequent to the directive, the national court must interpret its national law in the light of the wording and the purpose of the directive in order to achieve the result sought by the latter and therefore comply with the third paragraph of Article 189 of the Treaty (...)."

or primary (...)” (Fallon, 1995).¹¹⁶

This is a solution that limits the law referred to by the conflict rule. It is, however, uniform on a Member State. The genuineness of foreign law preserves the law of the Union without integrating the legal system to a Member State, which at a global level calls the conflict rule.

On the contrary, the law refers to third states and interprets in a compliant way the application of foreign law, according to its own canons. The values, thus detect the legal system of the Union manifesting also the control of compatibility of foreign law with public order, as we have noted in the previous paragraphs.

The role of higher jurisdictions

The relative control by higher jurisdictions on foreign law recalls the conflict rule.

The arguments are generally many and justify the inclusion in favor of common rules on this aspect. The non-compliant application of national law recalls a rule of Union law, which determines a sort of disavowal by a national judge.

The absence of any control, through means of appeal, is susceptible to determining indirectly to a prejudice relating to the effectiveness of conflict rules, which are uniform with the

¹¹⁶Fallon affirms that: “(...) lorsqu’est en cause la compatibilité du droit étranger avec le droit primaire et qu’une interprétation raisonnée de celui-ci, eu égard à ses termes, permet d’assurer cette compatibilité (...)”.

principle of effectiveness and the possibility of a uniform rule, which subjects the higher jurisdictions to foreign law, that follows the arguments that are developed in the previous paragraphs.

The potential discrimination is generated by the objectives of a control, that admits its own and only national law (Von Hein, Kieninger, Rühl, 2019; Wilke, 2020). According to Art. 18 TFEU the prohibition, that is placed and discriminates on the basis of nationality, is sensitive to the uniform conflict rules and refers to the connecting factor of citizenship (Wilke, 2020).

The prohibition of resorting to a higher jurisdiction for violation of foreign law is compatible with the prohibition of remedying errors in the application of the law that calls for the duty and respects foreign law. In such a way, it limits and guarantees an effective and adequate access to justice.

Concluding remarks

The process of communitarization of foreign law, as a definition of private international law of the Union and as a system, detects and qualifies its functionality, characterizing the European regulations, which have intervened to and respect the creation of an area of freedom, justice and security. It is an element that seeks to unify and manifest a legislative policy, that allows the stratification of a normative production within the scope of

judicial cooperation in the civil sector.

The expansive tendency of private international law of the Union respects the national systems, that are contrary and express for their autonomous character. The uniform nature as a common margin disciplines, destines and integrates the existence of a plurality of systems of private international law bringing consequences that derive from its recognition to the CJEU, as interpretation and competence of the Union itself. In other words, it is an external action in the conclusion of treaties in the field of private international law.

The creation and development of exegetical criteria effectively preserve conflict rules for European regulations. The system of private international law of the Union has given an account in an incomplete and objective way to the same. This trend regulates in a sectoral and incomplete way general questions of the private international law of the Union, such as a lack of regulation by the legislator in questions, that define the status of foreign law.

The institutions, in a process that leads to the formulation of European regulations and to the attribution of the European judicial network, specify the limits and informative tasks, as an expression of the will of the European legislator and as a discipline of the issues, that are the object of our investigation.

This is an alternative path of judicial cooperation, which regulates the legislation of national systems. It represents a

system of private international law of the Union, which emerges from provisions contained in regulations, that inefficiently highlight the coordination between uniform conflict rules and national procedural provisions at the level of certainty, uniformity and predictability of solutions.

Thus, at the same level, the jurisprudence of the ECtHR and the resolution of the Institut de Droit International are confirmed regarding the procedural treatment of foreign law and the verification of knowledge, which is applied ineffectively by national judges, who risk hindering access to justice, that affects the protection related to a fair trial.

The considerations, as the basis of a necessity for the intervention of a European legislator, find legal basis in Art. 81 TFEU. The considerations and the relevance of a system of principles of the law of the Union provides for the definition of foreign law, that identifies issues that compose it, as well as the parameters that refer to its own criteria, for a future and possible rule of integration and harmonization.

The judgment of foreign law connected with the ex officio application of the conflict rules, as well as the relevant principles and values, are sought in the primacy, non-discrimination of the principle of loyal cooperation of the respective corollaries (Liakopoulos, 2022).

This is how the procedural treatment of conflict rules is defined

as an outcome, which does not reach the action of the principles of equivalence and effectiveness alongside the principle of loyal cooperation. In other words, these are limits of procedural autonomy of the Member States.

The principle of effectiveness is aimed at enhancing the prescriptive character of conflict rules, that European regulations contain, allowing the achievement of objectives of certainty, uniformity and predictability of solutions.

The interpretation allows to overcome the legislation of national states by also establishing the rule of the principle of a conflict of rule, which applies *ex officio* to the national judge, as an opportunity for modulation of the parties involved and the possibility of concluding an agreement, according to the limits and through the choice of law, as selections of the *lex fori*.

This solution allows and preserves the effectiveness in the private international law of the Union, noting that it does not allow to overcome the theoretical divergences to the optional conception for the conflict rules and the relative autonomy of the international private law.

The determination of foreign law confirms the relative application to a European system, to private international law as a principle of *iura (aliena) novit curia* and as a principle of effectiveness.

The same principle of loyal collaboration seems to impose on national judgements an active movement through the search for foreign law excluding, however, the prevalence granted to the law of the forum. Thus, mutual trust and functionality respect the principle of mutual recognition for the rules of private international law, that are intended to work in a determined manner, according to the incompatibility of the solutions, which identify private international law. They are intended to work with the incompatibility and the solutions, that are identified with foreign law and the legal system of a Member State, as a fact that subjects the procedural treatment.

The effectiveness of the means of determination of foreign law outside of its own uniformity by the legislator of the Union is oriented towards values of fair trial. An aspect that is linked to the creation at global level of instruments of international cooperation.

The principles, values pertinent to the structural characteristics of the rules, that are brought to regulations justify the ascertainment of their content, as a law that recalls the connection criteria with the conflict rule.

In sum, in the application to a European system of private international law, the principle of faithful application to foreign law follows harmonized and structured rules. The conflict rules influence national judges to find and evaluate the compatibility

of recalled norms, that are referable to a legal system of a Member State. The law of the Union favors interpretations that are compliant with this syllogism. It is, also, reasonable and coherent that the values and principles detect the analysis by higher jurisdictions, recalling foreign law.

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